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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1926

No. [redacted] 190

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY AND ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, APPELLANTS,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, HOUSTON COTTON EXCHANGE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS

FILED JULY 30, 1925

(31,372)

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No. 649

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[fol. 1] Caption omitted

[fol. 1½] [File endorsement omitted]

[fol. 2] **IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION**

In Equity

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY and ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Plaintiffs,

vs.

UNITED STATES OF AMERICA, Defendant

BILL OF COMPLAINT—Filed May 28, 1925

To the Honorable the Judges of the District Court of the United States for the Northern District of Texas:

The Chicago, Rock Island and Pacific Railway Company, a consolidated corporation organized and existing under and by virtue of the laws of the States of Illinois and Iowa, herein referred to as the Rock Island, and St. Louis-San Francisco Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri, herein referred to as the Frisco, bring this, their bill of complaint, against the United States of America on behalf of themselves and such other corporations as have an interest herein and may, by proper proceedings, become parties hereto, and hereby sue to enjoin, set aside, suspend and annul an order of the Interstate Commerce Commission, a Commission existing by virtue of an Act [fol. 3] of Congress of February 4, 1887, entitled "An Act to Regulate Commerce" and the acts amendatory thereof and supplementary thereto, and thereupon respectfully show to the court:

I

The Rock Island, since March 1, 1920, has been and now is a common carrier engaged in operating several thousand miles of railroad in the States of Oklahoma, Arkansas, Tennessee, Kansas, Missouri, Iowa, Illinois, Louisiana, New Mexico, Colorado, Nebraska, South Dakota and Minnesota, and engaged in the transportation of freight and passengers in interstate commerce, subject to the provisions of the Interstate Commerce Act. For many years prior to December 28, 1917, the Rock Island, as a common carrier, was engaged in the business of operating its railroad in the states aforesaid and in the transportation of freight and passengers in interstate commerce. The Frisco, since March 1, 1920, has been and now is a common carrier engaged in the business of operating several thousand miles of rail-

road in the states of Oklahoma, Missouri, Kansas, Arkansas, Tennessee, Mississippi and Alabama, and engaged in the transportation of freight and passengers in interstate commerce, subject to the provisions of the Interstate Commerce Act. For many years prior to December 28, 1917, the Frisco was engaged in the business of operating its railroad and in the transportation of persons and property in interstate commerce.

II

The defendant, United States of America, is being sued by the express authority of the Congress as set forth in the Act of October 22, 1913, entitled "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen and for other purposes," 38 Statutes at Large, 219.

[fol. 4]

III

This suit is brought to enjoin, set aside, suspend and annul an order of the Interstate Commerce Commission. It arises under the Constitution and laws of the United States, particularly under the commerce clause of the Constitution and the Fifth Amendment thereof, and under the Interstate Commerce Act and is instituted under the provision of the Interstate Commerce Act and of the Act of October 22, 1913, entitled "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen and for other purposes," and also under the general equity jurisdiction of this court.

IV

The Dallas Cotton Exchange is a corporation organized and existing under and by virtue of the laws of the State of Texas, having its residence in the City of Dallas, State of Texas, and in the Northern District of Texas. It was upon the petition of the Dallas Cotton Exchange, together with certain other corporations, that the Interstate Commerce Commission made and entered the order relating to transportation which this suit is instituted to enjoin, set aside, suspend and annul.

V

The petitioners before the Interstate Commerce Commission, in addition to the Dallas Cotton Exchange, were the Houston Cotton Exchange and Board of Trade, a corporation with its principal office at Houston, State of Texas; the Galveston Cotton Exchange and Board of Trade, a corporation with its principal office at Galveston, State of Texas; Galveston Commercial Association, a corporation with its principal office at Galveston, State of Texas, and the Oklahoma [fol. 5] Cotton Exchange, a corporation with its principal office at Oklahoma City, State of Oklahoma.

The defendants before the Commission, including plaintiffs herein, designated in the order which this suit is brought to enjoin, were

rail carriers operating in southwestern United States and in northeastern United States and Canada, and water lines operating between certain Texas Gulf Ports and North Atlantic Ports.

VI

The proceeding before the Interstate Commerce Commission which was instituted by the said petitioners and by the filing of their said petition or complaint, and in which the Interstate Commerce Commission entered the order which this suit is instituted to enjoin, was placed upon the formal docket of the Interstate Commerce Commission as Number 13418. The said petition or complaint was filed on or about December 27, 1921. A copy thereof is hereto attached and marked Exhibit A.

In said petition or complaint it was alleged that complainant corporations were organizations of persons, firms and corporations engaged in the business of buying and selling cotton and cotton linters, and in the shipping and delivering of such commodities in interstate commerce; that complainants were authorized to represent the interests of such persons, firms and corporations with respect to matters in their mutual interest in the purchase and shipment of such commodities in interstate commerce; that members of complainants purchased cotton and cotton linters and shipped the same from various stations located in the State of Oklahoma to various destinations in the northeastern portion of the United States and in eastern Canada; that the defendants named therein were common carriers engaged in the transportation of property partly by railroad and partly by [fol. 6] water between the said points of origin and the said points of destination and as such participate in the transportation of cotton and cotton linters from the said points of origin to the said points of destination; that although the said defendant carriers participated in the transportation of cotton and cotton linters on through movements from the said points of origin to the said points of destination through the port of Galveston, Texas, and other Texas ports, and have arrangements for the carriage of same, they, nevertheless, do not publish or file with the Interstate Commerce Commission and do not apply joint through commodity rates upon the same for such movements via rail and water routes through Galveston and other Texas ports; that by reason of the failure of the defendants to provide joint through commodity rates applying via rail to the port of Galveston and other Texas ports, and via water to north Atlantic ports and via rail or water or rail and water from said ports, complainants and all other persons shipping cotton and cotton linters via such routes were required to pay the combination of local rates; that by reason of the premises the defendants exacted from complainants and other shippers unjust and unreasonable rates for the transportation of such cotton and cotton linters; and that by reason of the failure of defendants to establish joint through rates for the transportation of such traffic, as they have theretofore been requested to establish, complainants and their members have been subject to payments of rates, fares and charges that were unjust and unreason-

able and in violation of Section 1 of the Interstate Commerce Act. And said petition or complaint prayed for an order of the Interstate Commerce Commission commanding the defendants, and each of them, to establish just and reasonable through joint rates for the transportation of cotton and cotton linters from the said points of origin to the said points of destination.

[fol. 7] VII

Plaintiff filed their answers to said petition or complaint in which they and each of them denied that the rates complained of were in violation of the Act of Regulate Commerce and in which they denied that complainants were entitled to the relief prayed for, or any part thereof, or to any other or further relief, or to any relief whatsoever.

VIII

The Interstate Commerce Commission assigned said proceeding for hearing April 20, 1922, at 10 o'clock a. m., at the United States Court Rooms, Houston, Tex., before Examiner Oliver. A hearing in accordance with this assignment began on April 20, 1922, and was closed at 1:30 p. m., April 22, 1922. There was no other or further hearing in this proceeding. On or about November 4, 1922, the Examiner filed his proposed report and findings in which it was stated, among other things, that nothing appeared of a sufficiently definite nature to justify a finding that any fixed differential should be established between the rates via the all-rail routes and those applying partly by rail and partly by water, that the practical effect of complainants' prayer would be the establishment of the Texas common point rates from Oklahoma, that the carriers should not be compelled to indefinitely project into the interior rail and water rates based on the all-rail rates, and that the Commission should find that the rail-and-water rates on cotton from Oklahoma points to points in the northeastern portion of the United States and eastern Canada are not unreasonable and dismiss the complaint. A copy of the said proposed report is attached hereto and marked Exhibit B.

[fol. 8] IX

Petitioners before the Commission filed exceptions to the proposed report, and oral argument was had before Division 4 of the Interstate Commerce Commission. On, to wit, January 23, 1924, the Interstate Commerce Commission issued a report in which it expressed conclusions differing from those recommended by the Examiner and in which the Commission found that the defendants, including plaintiffs, "should establish joint rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to points in New England territory, that the existing rates for such transportation are, and for the future will be, unreasonable to the extent they exceed or may exceed, rates constructed by the deduction of 4 cents from the present all-rail rates," and "that the rail-and-water and the rail-water-and-rail rates

on cotton from Oklahoma points to other points in the northeastern portion of the United States are not unreasonable." It was further stated in this report that no order would be entered at the time, but that the carriers would be expected to comply with the findings of the Commission within 90 days from the service of the report, failing which the matter might be again brought to the Commission's attention. A copy of the Commission's report of January 23, 1924, is attached hereto and marked Exhibit C.

X

After being furnished with a copy of said report, a number of the defendants before the Commission, including plaintiffs, filed their petition with the Commission to reopen the said cause for the purpose of taking further evidence, or, in the event that such a prayer was denied, for a reargument of the issues therein. It was alleged in this petition, among other things, that under the facts as shown by the [fol. 9] record, and under the law, the Interstate Commerce Commission was without jurisdiction to require the petitioners, including these plaintiffs, to enter into and establish joint rates applying partly by rail and partly by water on cotton from Oklahoma through Galveston or other Texas ports to New England territory, and that the Commission was without authority to effect an equalization of the rail-and-water rates with the all-rail rates so as to induce the movement of cotton over the water routes, or to establish any fixed differential between the rates applicable to the all-rail routes and the rates applicable to the rail-and-water routes.

XI

On, to wit, the 12th day of May, 1924, the Commission made and entered an order denying the said petition for rehearing but reopening the proceeding for further oral argument for such time as the Commission might thereafter direct. And on towit, May 28, 1924, the Commission assigned the said cause for oral argument before the entire Commission on July 16, 1924. Oral argument was had before the entire Commission at the time and place aforesaid, and thereafter, on, to wit, November 4, 1924, the Commission issued a "report of the Commission on further argument," to which Commissioner Hall, then Chairman of the Interstate Commerce Commission, dissented. A copy of said report is attached hereto and marked Exhibit D.

It was again stated in this report that the defendants, including these plaintiffs, would be expected to comply with the Commission's findings within 90 days from the service of the report, failing which the matter might be again brought to the Commission's attention.

[fol. 10] XII

On, to wit, March 9, 1925, the Interstate Commerce Commission, without notice to plaintiffs or either of them, and without giving

them, or either of them, an opportunity to be heard, made and entered its order in said proceeding which is, in terms, as follows:

Order

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 9th Day of March, A. D. 1925

No. 13418

Houston Cotton Exchange and Board of Trade, Galveston Cotton Exchange and Board of Trade, Galveston Commercial Association, Dallas Cotton Exchange, and Oklahoma State Cotton Exchange

vs.

A. & A. R. R. Corp., The A., T. & S. F. Ry. Co., A. City R. R. Co. The B. & O. R. R. Co.; B. & A. R. R. Co. (The N. Y. C. R. R. Co., Lessee); B. & M. R. R.; B. & Y. S. S. Co.; B. R. & P. Ry. Co.; Canadian National Railways; The Canadian Pacific Ry. Co.; Catskill Evening Line, Inc.; The Central R. R. Co. of New Jersey; Central Vermont Ry. Co.; The C. R. I. & G. Ry. Co.; The C. R. I. & P. Ry. Co.; C. O. & W. R. R. Co.; Clyde Steamship Company; The D. & H. Co.; The D. L. & W. R. R. Co.; Eastern S. S. Lines, Inc., Erie R. R. Co.; Fonda, Johnstown & Gloversville R. R. Co.; Ft. S. & W. R. R. Co.; and Charles T. O'Neal, Receiver; The Ft. W. & D. C. Ry. Co.; G. H. & S. A. Ry. Co.; G. & U. R. R. Co.; G. T. W. Ry. Co.; G. T. P. Ry. Co.; G. & J. Ry. Co.; G. C. & S. F. Ry. Co.; Hartford & N. Y. Transportation Co.; H. & S. R. R. Co.; H. & T. C. R. R. Co.; The Houston, East & West Texas Ry. Co.; Hudson Navigation Co., and Middleton S. Borland and James A. Emerson, Receivers; International & Great Northern Ry. Co., and James A. Baker, Receiver; The K. C. M. & O. R. R. Co., and William T. Kemper, Receiver; K. C. M. & O. Ry. Co. of Texas; The K. C. S. Ry. Co.; K. O. & G. Ry. Co.; K. O. & G. Ry. Co. of Texas; The Lehigh & Hudson River Ry. Co.; Lehigh & New [fol. 11] England R. R. Co.; Lehigh Valley R. R. Co.; Mallory S. S. Co.; M. C. R. R. Co.; The C. C. R. R. Co.; Midland Valley R. R. Co.; M. K. & T. Ry. Co., and Charles E. Schaff, Receiver; The M. K. & T. Ry. Co. of Texas, and Charles E. Schaff, Receiver; M. P. R. R. Co.; Moshassuck Valley R. R. Co.; The New England S. S. Co.; The N. Y. C. R. R. Co.; The N. Y., N. H. & H. R. R. Co., N. Y. O. & W. R. R. Co.; N. Y. S. & W. R. R. Co.; Oklahoma-Southwestern Ry. Co.; The O. N. M. & P. Ry. Co.; O. N. Ry. Co.; Paris & Great Northern R. R. Co.; The P. R. R. Co.; P. & R. Ry. Co.; The Pittsburgh & Shawmut R. R. Co.; The Quebec Ry., Light & Power Company; Raritan River R. R. Co.; Rutland R. R. Co.; St. Johnsburg & Lake Champlain R. R. Co.; St. L. El Reno & Western Ry. Co., and K. E. Humphrey, Receiver; St. L.-S. F. Ry. Co.; St. Louis, San Francisco & Texas Ry. Co.; Sand Springs

Ry. Co.; Southern Pacific Co.; Southern Pacific Company-Atlantic Steamship Lines; Texarkana & Fort Smith Ry. Co.; Texas Midland R. R., Texas, Oklahoma and Eastern R. R. Co.; The Toronto, Hamilton & Buffalo Railway Company; The Trinity & Brazos Valley Ry. Co.; and John A. Hulen, Receiver; Western Maryland Rail Company; West Jersey & Seashore Railroad Company; West Shore Railroad Company (The New York Central Railroad Company Lessee); The Wichita Falls & Northwestern Railway, and Charles E. Schaff, Receiver; and Wood River Branch Railroad Company.

It appearing that on January 23, 1924, the Commission entered its report and on November 4, 1924, its report on further argument in the above-entitled proceeding, which said reports are hereby referred to and made a part hereof;

It further appearing that the said report of November 4, 1924, provided for a period of 90 days from the service thereof within which the above-named defendants were expected to comply with the findings of the Commission as set forth in the said report of January 23, 1924;

And it further appearing that the said report of November 4, 1924, was served on the parties on November 11, 1924, and that said defendants have thus far failed to comply with said findings:

It is ordered that the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist on or before April 25, 1925, and [fol. 12] thereafter to abstain from publishing, demanding, or collecting rail-and-water and rail-water-and-rail rates for the transportation of cotton, in carloads, minimum 20,000 pounds, from points in Oklahoma on the lines of defendants as shown on pages 83 to 107 inclusive, of Southwestern Lines' Tariff No. 80-E, F. A. Leland's I. C. C. No. 1467, and in supplements and reissues thereof, via Galveston, Tex., and the lines of defendant Mallory Steamship Company to points in New England territory on the lines of defendants set forth on pages 34 to 43, inclusive, of the said tariff and supplements and reissues thereof, which exceed the rates prescribed in the next succeeding paragraph.

It is further ordered that said defendants, according as they participate in the transportation, be, and they are hereby notified and required to establish, on or before April 25, 1925, upon notice to this commission and to the general public by not less than 5 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of cotton, in carloads, minimum 20,000 pounds from points in Oklahoma above specified, via Galveston, Tex., and the lines of defendant Mallory Steamship Company to points in New England territory above specified joint rail-and-water and rail-water-and-rail rates which shall not exceed rates 4 cents per 100 pounds lower than the present all-rail rates from and to the same points.

It is further ordered that the above-named defendants according as they participate in the transportation, be, and they, are hereby,

notified and required to cease and desist on or before April 25, 1925, and thereafter to abstain from publishing, demanding, or collecting rail-and-water and rail-water-and-rail rates for the transportation of cotton in carloads minimum 20,000 pounds, from points in Oklahoma above specified, via Galveston, Tex., and the lines of defendant Southern Pacific Company-Atlantic Steamship Lines, to points in New England territory above specified which exceed the rates prescribed in the next succeeding paragraph.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby notified and required to establish, on or before April 25, 1925, upon notice to this commission and to the general public by not less than 5 days' filing and posting in the manner prescribed in section 6 of the Interstate commerce act, and thereafter to maintain and apply to the transportation of cotton, in carloads, minimum 20,000 pounds, from [fol. 13] points in Oklahoma above specified via Galveston, Tex., and the lines of defendant Southern Pacific Company-Atlantic Steamship Lines, to points in New England Territory above specified joint rail-and-water and rail-water-and-rail rates which shall not exceed rates 4 cents per 100 pounds lower than the present all-rail rates from and to the same points.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the Commission:

George B. McGinty, Secretary. (Seal.)

Thereafter, on, to wit, March 28, 1925, the Interstate Commerce Commission, without notice to plaintiffs, or either of them, and without giving them, or either of them, an opportunity to be heard, made and entered its order in said proceeding which is, in terms, as follows:

Order

At a General Session of the Interstate Commerce Commission Held at Its Office, in Washington, D. C., on the 28th Day of March, A. D. 1925.

No. 13418

Houston Cotton Exchange and Board of Trade et al.

vs.

Arcade & Attica Railroad Corporation et al.

Upon further consideration of the record in the above-entitled proceeding, and good cause appearing therefor:

It is ordered, That the order entered in this proceeding on March 9, 1925, be, and it is hereby, modified by eliminating from the fourth, fifth, sixth and seventh paragraphs thereof the following: "in carloads, minimum 20,000 pounds.";

It is further ordered, That the said order of March 9, 1925, which was by its terms made effective April 25, 1925, be, and it is hereby, further modified so that it will become effective on May 15, 1925, [fol. 14] instead of on said April 25, 1925; but in all other respects the said order of March 9, 1925, shall remain in full force and effect.

By the Commission:

George B. McGinty, Secretary. (Seal.)

Thereafter, on to-wit, April 29, 1925, the Interstate Commerce Commission, without notice to plaintiffs, or either of them, and, without giving them, or either of them, an opportunity to be heard, made and entered its order in said proceeding which is, in terms, as follows:

Order

At a General Session of the Interstate Commerce Commisson Held at Its Office, in Washington, D. C., on the 29th Day of April, A. D. 1925.

No. 13418

Houston Cotton Exchange and Board of Trade et al.

vs.

Arcade & Attica Railroad Corporation et al.

Upon further consideration of the record in the above-entitled proceeding, and of defendants' petition for modification, and consent of complainants thereto:

It is ordered, That the order entered in this proceeding on March 9, 1925, as modified by order entered March 28, 1925, be, and it is hereby, further modified in the fifth and seventh paragraphs by adding immediately at the end thereof, the following:

Provided, however, that in complying with said order defendants shall not be required to establish rail-and-water and rail-water-and-rail rates lower than $1.50 per 100 pounds.

It is further ordered, That the order entered herein on March 9, 1925, as subsequently modified, which was by its terms made effective May 15, 1925, be, and it is hereby, further modified so that it will become effective on June 15, 1925, instead of on said May 15, 1925.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 15] It is the order made and entered on, to-wit, March 9, 1925, as modified, that this suit is brought to enjoin, set aside, suspend and annul.

XIII

Common carriers by water, with which common carriers by rail may be required to join in establishing and applying joint through rates for the transportation of property, are common carriers by water subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended, and in order that the Commission may exercise its power to require the establishment of joint through rates the said transportation must be subject to the jurisdiction of the Commission and to the terms and provisions of the Interstate Commerce Act as amended.

The Interstate Commerce Commission was without authority to require plaintiffs, or either of them, to establish, maintain and apply the said joint rates to the transportation of cotton from points in Oklahoma, via Galveston, Tex., and the lines of the Mallory Steamship Company, to points in New England territory, and its said order is null and void:

(a) For the reason, among others that such transportation is not subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(b) For the reason, among others, that the Mallory Steamship Company is not subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(c) For the reason, among others, that the Commission did not find, nor did the evidence show, that such transportation is subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(d) For the reason, among others, that the Commission did not find, nor did the evidence show, that the Mallory Steamship Company is subject to the jurisdiction of the Commission or to the terms [fol. 16] and provisions of the Interstate Commerce Act as amended.

(e) For the reason, among others, that the Mallory Steamship Company is not under the control or management of any rail carrier, and the Commission did not find, nor did the evidence before the Commission show, that the Mallory Steamship Company is used with the lines of plaintiffs, or with the lines of either of them, or with the lines of any rail carrier, under an arrangement for a continuous carriage or shipment.

The Interstate Commerce Commission was without authority to require plaintiffs, or either of them, to establish, maintain and apply the said joint rates to the transportation of cotton from points in Oklahoma, via Galveston, Tex., and the lines of the Southern Pacific Company-Atlantic Steamship Lines, to points in New England territory, and its said order is null and void:

(a) For the reason, among others, that such transportation is not subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(b) For the reason, among others, that the Southern Pacific Company-Atlantic Steamship Lines, in respect of such transportation, is not subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(c) For the reason, among others, that the evidence before the Commission did not show that the said transportation of cotton is subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(d) For the reason, among others, that the evidence did not show that the Southern Pacific Company-Atlantic Steamship Lines is subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(e) For the reason, among others, that there is no competent evidence before the Commission to show that the Southern Pacific Company-Atlantic Steamship Lines is used with the lines of these plaintiffs, or with the lines of either of them, or with the lines of [fol. 17] any rail carrier, under an arrangement for a continuous carriage or shipment, or to show that the Southern Pacific-Atlantic Steamship Lines is used under the common control or management of these plaintiffs, or either of them, or any rail carrier.

XIV

The said order of the Interstate Commerce Commission, in so far as it requires plaintiffs, or either of them, to establish, maintain and apply the said joint rates to the said transportation of cotton in connection with the Mallory Steamship Company, is null and void and constitutes a taking of the property of these plaintiffs, and each of them, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, for the reason among others that there is no competent evidence before the Commission to show that the Mallory Steamship Company, or the said transportation of cotton, is subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

XV

The aforesaid order of the Interstate Commerce Commission, in so far as it requires plaintiffs, or either of them, to establish, maintain and apply said joint rates to the said transportation of cotton in connection with the Southern Pacific Company-Atlantic Steamship Lines, is null and void and constitutes a taking of the property of these plaintiffs, and each of them, without due process of law in violation of the Fifth Amendment to the Constitution of the United States, for the reason, among others, that there is no competent evidence before the Commission to show that the Southern Pacific Company-Atlantic Steamship Lines, or the said transportation of cotton, is subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

[fol. 18] XVI

If the aforesaid order is based in whole or in part upon the provisions of Paragraph (13) of Section 6 of the Act to Regulate Commerce as amended, said order is null and void for the reason, among others, that it is made upon a formal complaint and the said complaint does not invoke the exercise of the power and jurisdiction of the Commission under said provisions.

XVII

The lines of railroad of the Rock Island extend from the State of Oklahoma in an easterly and northeasterly direction to Memphis, Tennessee, Saint Louis, Missouri, and Chicago, Illinois, and, in connection with the lines of railroad of other carriers at each of said points, are a part of many through and direct all-rail routes for the transportation of cotton and other property from the State of Oklahoma to New England territory. The lines of railroad of the Frisco extend from the State of Oklahoma in a northeasterly direction to Saint Louis, Missouri, and, in connection with the lines of railroad of other carriers at said point, are a part of many through and direct all-rail routes for the transportation of cotton and other property from the State of Oklahoma to New England territory.

Plaintiffs do not, nor do either of them, own or operate any line of railroad in the State of Texas. Cotton originating in Oklahoma on the lines of the Rock Island and moving to or through Galveston, Tex., is transported by the Rock Island to the Oklahoma-Texas state line and by The Chicago, Rock Island and Gulf Railway Company from said state line to Fort Worth, Tex., or to Dallas, Tex., where it is turned over to other rail carriers for further transportation. Cotton originating in Oklahoma on the lines of the Frisco and moving [fol. 19] to or through Galveston, Tex., is transported by the Frisco to the Oklahoma-Texas state line and by the St. Louis, San Francisco & Texas Railway Company from said state line to Fort Worth, Tex., where it is turned over to other rail carriers for further transportation. The entire length of the railroads of plaintiffs, and of each of them, extending easterly and northeasterly from the State of Oklahoma, lies between the termini of the proposed through routes.

Paragraph (4) of Section 15 of the Act to Regulate Commerce, as amended, provides that in establishing any through routes the Commission shall not (except as provided in Section 3, and except where one of the carriers is a water line), require any carrier by railroad, without its consent, to embrace in such routes substantially less than the entire length of its railroad which lies between the termini of such proposed through routes, unless such inclusion of lines would make the through routes unreasonably long as compared with another practicable through route which could otherwise be established.

Paragraph (1) of Section 1 of said Act, as amended, provides, among other things, that the provisions of said Act shall apply to

common carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment.

The exception of said Paragraph (4) of Section 15—(except as provided in Section 3, and except where one of the carriers is a water line), relates to common carriers subject to the jurisdiction of the Commission or to the terms and provisions of the said Act. If the water carrier in the proposed through routes is not subject to the jurisdiction of the Commission or to the terms and provisions of the said Act, the exception does not apply and the Commission may not [fol. 20] require any carrier by railroad, without its consent, to embrace in the proposed through rates substantially less than the entire length of its railroad.

The Interstate Commerce Commission was without authority to require plaintiffs, or either of them, to embrace in the proposed through routes for the transportation of cotton from Oklahoma via Galveston, Tex., and the lines of the Mallory Steamship Company, to points in New England territory, substantially less than the entire length of their railroads, or the railroads of each of them, and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lie between the termini of such proposed through routes, and its said order is null and void:

(a) For the reason, among others, that the said transportation is not subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(b) For the reason, among others, that the Mallory Steamship Company is not subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(c) For the reason, among others, that the Commission did not find, nor did the evidence show, that such transportation is subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(d) For the reason, among others, that the Commission did not find, nor did the evidence show, that the Mallory Steamship Company is subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(e) For the reason, among others, that the Mallory Steamship Company is not under the control or management of any rail carrier and the Commission did not find, nor is there any evidence before the Commission to show, that the Mallory Steamship Company is used with the lines of these plaintiffs, or with the lines of either of them, or with the lines of any rail carrier, under an arrangement for a continuous carriage or shipment.

[fol. 21] (f) For the reason, among others, that the Commission did not find, nor did the evidence show, that such inclusion of lines would make the through routes unreasonably long as compared with another practicable through route which could otherwise be established.

(g) For the reason, among others, that the plaintiffs have not, nor have either of them, consented thereto.

(h) For the reason, among others, that the Commission has not declared an emergency.

The Interstate Commerce Commission was without authority to require plaintiffs, or either of them, to embrace in the proposed through routes for the transportation of cotton from Oklahoma via Galveston, Tex., and the lines of the Southern Pacific Company-Atlantic Steamship Lines, to points in New England territory, substantially less than the entire length of their railroads or the railroads of each of them, and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lie between the termini of such proposed through routes, and its said order is null and void:

(a) For the reason, among others, that the said transportation is not subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(b) For the reason, among others, that the Southern Pacific Company-Atlantic Steamship Lines is not subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(c) For the reason, among others, that the evidence before the Commission did not show that the said transportation of cotton is subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(d) For the reason, among others, that the evidence did not show that the Southern Pacific Company-Atlantic Steamship Lines is subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act as amended.

(e) For the reason, among others, that there is no competent [fol. 22] evidence before the Commission to show that the Southern Pacific Company-Atlantic Steamship Lines is used with the lines of these plaintiffs, or with the lines of either of them, or with the lines of any rail carrier, under an arrangement for a continuous carriage or shipment, or to show that the Southern Pacific Company-Atlantic Steamship Lines is used under the common control or management of these plaintiffs, or either of them, or any rail carrier.

(f) For the reason, among others that the Commission did not find, nor did the evidence show, that such inclusion of lines would make the through routes unreasonably long as compared with

another practicable through route which could otherwise be established.

(g) For the reason, among others, that the plaintiffs have not, nor have either of them, consented thereto.

(h) For the reason, among others, that the Commission has not declared an emergency.

XVIII

The Interstate Commerce Commission was without authority to require plaintiffs, or either of them, to establish, maintain and apply to the transportation of cotton from the said points in Oklahoma, via Galveston, Tex., and the lines of the Mallory-Steamship Company and of the Southern Pacific Company-Atlantic Steamship Lines, to said points in New England territory joint rail-and-water and rail-water-and-rail rates which shall not exceed 4 cents per 100 pounds lower than the present all-rail rates from and to the same points, and the said order is null and void:

(a) For the reason, among others, that the petition or complaint alleged violations of Section 1 of the Interstate Commerce Act and contained a prayer for an order under Section 15 of said Act requiring the defendants therein named to establish just and reasonable through joint rates over the proposed routes. Said Section 15 provides that in case of a through route where one of the carriers is a water line, the Commission may, after a full hearing, establish the maximum rates applicable thereto. Yet the said order is not an order establ- [fol. 23] lishing reasonable maximum rates or reasonable maximum joint rates but is an order establishing rates over the said rail and water lines the measure of which is made to depend upon the measure of the all-rail rates from and to the same points.

(b) For the reason, among others, that if the "present all-rail rates" referred to in said order, as amended, shall be construed to mean the all-rail rates in effect on, to wit, March 9, 1925, or at the time the Commission issued its second report, or at the time the Commission issued its first report, the all-rail rates in effect on, to wit, March 9, 1925, or at the time the Commission issued its second report, or at the time the Commission issued its first report, were not the same as the all-rail rates from and to the said points at the time of the hearing or prior thereto, but were lower, and there is no competnt evidence before the Commission to show what the all-rail rates were from and to the said points on, to wit, March 9, 1925, or at the time the Commission issued its second report, or at the time the Commission issued its first report, or at any time after the date of the hearing.

(c) For the reason, among others, that it is in substance and effect an order requiring your petitioners, and each of them, to establish and maintain rates over their all-rail routes and the proposed rail-and-water routes so as to effect an equalization of the rail-

and-water and rail-water-and-rail rates with the all-rail rates, and the Commission was without power or authority to effect such an equalization.

(d) For the reason, among others, that it is in substance and effect an order requiring your petitioners, and each of them, to establish a fixed differential between the rates via the all-rail routes and those applying partly by rail and partly by water, and the Commission was without power or authority to so require.

(e) For the reason, among others, that the questions of equalizing the rail-and-water routes with the all-rail routes and of establishing a fixed differential between the rates via the all-rail routes and those applying partly by rail and party by water were not in issue under the complaint and answers, and the Commission was without authority to determine such questions.

[fol. 24] (f) For the reason, among others, that said order is not an order establishing reasonable maximum rates or reasonable maximum joint rates.

XIX

The Interstate Commerce Commission was without authority to require plaintiffs, or either of them, to cease and desist, on or before June 15, 1925, and thereafter to abstain, from publishing, demanding or collecting rail-and-water and rail-water-and-rail rates for the transportation of cotton from points in Oklahoma on the lines of your petitioners, and on the lines of each of them, as shown on pages 83 to 107, inclusive, of Southwestern Lines' Tariff No. 80-E, F. A. Leland's I. C. C. No. 1467, and supplements and reissues thereof, via Galveston, Tex., and the lines of the Mallory Steamship Company and of the Southern Pacific Company-Atlantic Steamship Lines, to points in New England territory on the lines of defendants set forth on pages 34 to 43, inclusive, of the said tariff and supplements and reissues thereof, which exceed the rates prescribed, or to require your petitioners, and each of them, to establish, maintain and apply to the transportation of cotton from points in Oklahoma above specified, via Galveston, Tex., and the said water lines, to points in New England territory above specified, joint rail-and-water and rail-water-and-rail rates which shall not exceed rates 4 cents per 100 pounds lower than the present all-rail rates from and to the same points, and the said order is null and void for the reason, among others, that said Southwestern Lines' tariff and supplements and reissues thereof are not in evidence, nor are pages 83 to 107, inclusive, thereof, or pages 34 to 43, inclusive, thereof, in evidence, nor does the evidence before the Commission show what points in Oklahoma on the lines of plaintiffs or on the lines of each of them, are shown on pages 83 to 107, inclusive, or on pages 34 to 43, [fol. 25] inclusive, of the said tariff and supplements and reissues thereof.

XX

The aforesaid order of the Interstate Commerce Commission is null and void and constitutes a taking of the property of plaintiffs, and each of them, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, for the reason, among others, that the Commission issued its first report on, to wit, January 23, 1924, and its report on further argument on, to wit, November 4, 1924, and, without notice to plaintiffs, or to either of them, and without giving them, or either of them, an opportunity to be heard, made and entered its said order of March 9, 1925, and the said subsequent orders.

XXI

The aforesaid order of the Interstate Commerce Commission is null and void for the reason, among others, that there is no competent evidence before the Commission from which it may be determined that rates for application over the proposed routes, not in excess of rates 4 cents less than the present all-rail rates from and to the same points, are reasonable maximum rates, or reasonable maximum joint rates.

XXII

The aforesaid order of the Interstate Commerce Commission is null and void for the reason, among others, that there is no competent evidence before the Commission to support its finding that the rates complained of are unjust and unreasonable.

[fol. 26]

XXIII

The aforesaid order of the Interstate Commerce Commission is null and void for the reason, among others, that it is arbitrary and unjust, and without competent evidence to support it.

XXIV

The aforesaid order of the Interstate Commerce Commission is null and void for the reason, among others, that there was no competent evidence before the Commission to show that it is desirable in the public interest that the defendants, including the plaintiffs herein, should establish joint rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to points in New England territory.

XXV

The aforesaid order of the Interstate Commerce Commission is null and void for the reason, among others, that there was no competent evidence before the Commission to show that the existing

rates for the said transportation via Galveston, Tex., are, and for the future will be, unreasonable to the extent they exceed, or may exceed, rates constructed by the deduction of 4 cents from the present all-rail rates.

XXVI

If the aforesaid order is not enjoined and set aside plaintiffs, and each of them, will be required to accept for transportation via Galveston, Tex., and the said water lines, large quantities of cotton originating on their lines at points in Oklahoma and destined to points in New England territory, which otherwise would be transported from and to the same points over the existing all-rail routes that now embrace substantially the entire length of their railroads lying between said points. The length of their railroads embraced [fol. 27] in the said proposed routes via Galveston, Tex., and the said water lines, is very much less than the length of their railroads embraced in the said existing all-rail routes and the earnings of plaintiffs, and each of them, on said cotton transported via Galveston, Tex., and the said water lines, would be substantially less than their earnings on said cotton transported over the said existing all-rail routes. Therefore, if the aforesaid order of the Commission is not enjoined or set aside and plaintiffs, and each of them, are compelled to comply therewith and to accept for transportation via Galveston, Tex., and the said water lines, said cotton originating on their lines from points in Oklahoma and destined to points in New England territory, which otherwise would be transported from and to the same points over the said existing all-rail routes, and for the transportation of which over the said all-rail routes plaintiffs, and each of them, would receive valuable compensation, plaintiffs, and each of them, will be deprived of substantial revenue to which they, and each of them, are justly entitled, all to the great damage of plaintiffs, and of each of them, for which they, and each of them, will be without adequate remedy or protection at law.

XXVII

If the aforesaid order of the Commission of March 9, 1925, is not enjoined and set aside and plaintiffs, or either of them, fail to comply therewith, they will be subject to liability for penalties for violation thereof pursuant to the provisions of the Interstate Commerce Act and will be without adequate remedy or protection at law.

XXVIII

In consideration whereof, inasmuch as plaintiffs are remediless in the premises and by the strict rules of the common law, and if the enforcement of said order of the Commission of March 9, 1925, [fol. 28] is not stayed and enjoined, will suffer irreparable damage, and to the end that they may obtain the relief to which they are entitled, plaintiffs pray:

First. A permanent injunction decreeing that the said order of the Commission of March 9, 1925, as modified, be set aside, annulled, and suspended, and its enforcement, operation and execution be forever enjoined.

Second. An interlocutory injunction suspending and restraining the enforcement, operation and execution of said order of March 9, 1925, as modified, in whole or in part and setting aside the *n*ame.

Third. Such other and further relief as may be proper in the premises.

May it please your Honors to grant unto plaintiffs not only a writ of injunction conformable to the prayer, but also a writ of subpœna directed to defendant in the manner provided by law commanding it on a day certain to appear and answer this bill of complaint, but not under oath, and to abide by and perform such order or orders and decree or decrees as to the court shall seem proper and required by the principle of equity and good conscience.

(Signed) Lassiter, Harrison & Pearson, M. G. Roberts, A. B. Enoch, Solicitors for Plaintiffs.

[fol. 29] *Duly sworn to by S. A. Johnson. Jural omitted in printing.*

[fol. 30] EXHIBIT A TO BILL OF COMPLAINT

BEFORE THE INTERSTATE COMMERCE COMMISSION

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.,
Complainants,

vs.

THE ARCADE AND ATTICA RAILROAD COPORATION et al.
Defendants.

Houston Cotton Exchange and Board of Trade,
Galveston Cotton Exchange and Board of Trade,
Galveston Commercial Association,
Dallas Cotton Exchange,
Oklahoma State Cotton Exchange,
Complainants,

v.

Arcade and Attica Railroad Corporation,
Atchison, Topeka & Santa Fe Railway Company, The
Atlantic City Railroad Company,
Baltimore & Ohio Railroad Company, The
Boston & Albany Railroad Company (The New York Central Railroad Company, Lessee),

Boston & Maine Railroad,
Boston & Yarmouth Steamship Company, Limited,
Buffalo, Rochester & Pittsburgh Railway Company,
Canadian National Railways,
Canadian Pacific Railway Company,
Catskill Evening Line, Inc.,
Central Railroad Company of New Jersey, The
Central Vermont Railway Company,
Chicago, Rock Island & Gulf Railway Company, The
Chicago, Rock Island & Pacific Railway Company, The
Clinton and Oklahoma Western Railroad Company, The
Clyde Steamship Company,
Delaware & Hudson Company, The
Delaware, Lackawanna & Western Railroad Company, The
Eastern Steamship Lines, Inc.,
Erie Railroad Company,
Fonda, Johnstown & Gloversville Railroad Company,
Fort Smith and Western Railroad Company, and Charles T. O'Neal, Receiver,
[fol. 31] Fort Worth & Denver City Railway Company, The
Galveston, Harrisburg & San Antonio Railway Company, The
Grafton & Upton Railroad Company,
Grand Trunk Railway Company of Canada, The
Grand Trunk Western Railway Company,
Grand Trunk Pacific Railway Company, The
Greenwich & Johnsonville Railway Company,
Gulf, Colorado & Santa Fe Railway Company,
Hartford & New York Transportation Company,
Houston & Shreveport Railroad Company,
Houston & Texas Central Railroad Company,
Houston East & West Texas Ry. Co., The
Hudson Navigation Company, and Middleton S. Borland and James A. Emerson, Receivers,
International & Great Northern Railway Company, and James A. Baker, Receiver,
Kansas City, Mexico & Orient Railroad Company, The, and William T. Kemper, Receiver,
Kansas City, Mexico & Orient Railway Company of Texas,
Kansas City Southern Railway Company, The
Kansas, Oklahoma & Gulf Railway Company,
Kansas, Oklahoma & Gulf Railway Company of Texas,
Lehigh & Hudson River Railway Company, The
Lehigh & New England Railroad Company,
Lehigh Valley Railroad Company,
Mallory Steamship Company,
Maine Central Railroad Company,
Michigan Central Railroad Company, The
Midland Valley Railroad Company,
Missouri, Kansas & Texas Railway Company, and Charles E. Schaff, Receiver,

Missouri, Kansas, & Texas Railway Company of Texas, The, and Charles E. Schaff, Receiver,
Missouri Pacific Railroad Company,
Moshassuck Valley Railroad Company,
New England Steamship Company, The
New York Central Railroad Company, The
New York, New Haven & Hartford Railroad Company, The,
New York, Ontario & Western Railroad Company,
New York Susquehanna & Western Railroad Company,
Oklahoma-Southwestern Railway Co.,
Oklahoma, New Mexico & Pacific Railway Company,
Okmulgee Northern Railway Company,
Paris & Great Northern Railroad Company,
Pennsylvania Railroad Company, The,
Philadephia & Reading Railway Company,
Pittsburgh & Shawmut Railroad Company, The
Quebec Railway, Light and Power Company, The,
Raritan River Railroad Company,
Rutland Railroad Company,
St. Johnsburg & Lake Champlain Railroad Company,
St. Louis, El Reno & Western Railway, and K. E. Humphrey, Receiver,
St. Louis-San Francisco Railway Company,
St. Louis, San Francisco & Texas Railway Company,
Sand Springs Railway Company,
Southern Pacific Company-Atlantic Steamship Lines,
Texarkana & Fort Smith Railway Company,
Texas Midland Railroad,
Texas, Oklahoma & Eastern Railroad Company,
Toronto, Hamilton & Buffalo Railway Company, The,
Trinity & Brazos Valley Railway Company, The, and John A. Hulen, Receiver,
[fol. 32] Western Maryland Railway Company,
West Jersey & Seashore Railroad Company,
West Shore Railroad Company and (The New York Central Railroad Company, Lessee),
Wichita Falls & Northwestern Railway, The, and Charles E. Schaff, Receiver,
Wood River Branch Railroad Company,
Defendants.

Complaint

To the Honorable Interstate Commerce Commission:

The complaint of the above named complainants respectfully shows:

I

That the complainant, Houston Cotton Exchange and Board of Trade is a corporation with its principal office at Houston, Texas; that the complainant Galveston Cotton Exchange and Board of Trade

is a corporation with its principal office at Galveston, Texas; that the complainant Galveston Commercial Association is a corporation with its principal office at Galveston, Texas; that the complainant Dallas Cotton Exchange is a corporation with its principal office at Dallas, Texas; and that the complainant Oklahoma State Cotton Exchange is a corporation with its principal office at Oklahoma City, Oklahoma.

II

That the complainant corporations are organizations composed of persons, firms and corporations engaged in the business of buying and selling cotton and cotton linters, and in the shipping and delivering of such commodities in interstate commerce, and complainants are authorized to represent the interests of such persons, firms and corporations with respect to matters in their mutual interest in the purchase and shipment of such commodities in interstate commerce.

[fol. 33] III

That members of complainants purchase cotton and cotton linters and ship the same from various stations located in the state of Oklahoma, a complete list of such stations being shown on pages 83 to 107, inclusive, of Southwestern Lines' Tariff No. 80 E., F. A. Leland's I. C. C. No. 1467, and in supplements and reissues thereof, and such cotton and cotton linters is shipped to various destinations in the northeastern portion of the United States and in eastern Canada, being points in the States of Massachusetts, New Hampshire, Rhode Island, Vermont, Maine, Connecticut, Pennsylvania, New Jersey, New York, Maryland, Delaware, West Virginia, Province of Quebec, Canada, Province of Ontario, Canada, Province of Nova Scotia, Canada, and Province of New Brunswick, Canada, a complete list of such points of destination being set forth on pages 34 to 43, inclusive, of Southwestern Lines' Tariff No. 80-E, F. A. Leland's I. C. C. No. 1467, and supplements and reissues thereof.

IV

That the defendants above named are common carriers engaged in the transportation of property partly by railroad and partly by water between the points of origin and points of destination hereinabove named and referred to, and as such participate in the transportation of cotton and cotton linters from said points of origin to said points of destination and as such are subject to the Interstate Commerce Act.

V

That although said defendant carriers participate in the transportation of cotton and cotton linters on through movements from said points of origin to said points of destination through the port of Galveston, Texas, and other Texas ports, and have arrangements for [fol. 34] the carriage of the same, nevertheless they do not publish or file with the Interstate Commerce Commission and do not apply

joint through commodity rates upon the same for such movements via rail and water routes through Galveston and other Texas ports.

VI

That by reason of the failure of the defendants to provide joint through commodity rates applying via rail to the Port of Galveston and other Texas Ports, and via water to North Atlantic ports, and via rail or water or rail and water from such ports, complainants and all other persons shipping cotton and cotton linters via such routes, are required to pay combination of local rates, which rates are found in Southwestern Lines' Tariff No. 80-E, F. A. Leland's I. C. C. No. 1467, and supplements and reissues thereof, and in W. J. Sedgman's I. C. C. No. 135.

VII

That by reason of the premises, the defendants exact from the complainants and other shippers, unjust and unreasonable rates for the transportation of such cotton and cotton linters.

VIII

That complainants have heretofore requested defendants to establish through joint routes and through just and reasonable rates and the defendants have wholly failed and refused so to do.

IX

That by reason of the facts stated in the foregoing paragraphs and by reason of the failure of defendants to establish reasonable joint through rates for the transportation of such traffic, the com-[fol. 35] plainants and their members have been subjected to payments of rates, fares and charges which are unjust and unreasonable and in violation of Section 1, of the Interstate Commerce Act.

Wherefore, complainants pray that defendants may be severally required to answer the charges herein; that after due hearing and investigation an order be made commanding defendants, and each of them, to establish just and reasonable through joint rates for the transportation of cotton and cotton linters from the points of origin above named to the points of destination above named; and to cease and desist from the aforesaid violations of said Interstate Commerce Act, and to establish and apply in the future such rates as the Commission may deem reasonable and just; and that such other and future order or orders be made as the Commission may consider proper in the premises.

Houston Cotton Exchange and Board of Trade, by F. R. Dalzell, Traffic Manager. Galveston Cotton Exchange and Board of Trade, Galveston Commercial Association, by E. H. Thornton, Traffic Manager. Dallas Cotton Exchange, by J. L. West, Mgr. Trans. Dept. Oklahoma State Cotton Exchange, by T. H. Pointer, Traffic Manager.

Dated at Houston, Texas, 19th day of December, 1921.

[fol. 36] EXHIBIT B TO BILL OF COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

vs.

THE ARCADE & ATTICA RAILROAD CORPORATION et al.

Submitted ——. Decided ——

Rail-and-water rates on cotton from Oklahoma points to points in the northeastern portion of the United States and eastern Canada found not unreasonable. Complaint dismissed.

R. C. Fulbright, F. R. Dalzell, E. H. Thornton and J. L. West for complainants.

A. B. Enoch, G. B. Ross, J. S. Hershey, T. L. Bothwell, J. E. Bailey, C. W. Owen and J. M. Strupper for southwestern rail lines.

William Simmons for Southern Pacific Company-Atlantic Steamship Lines and W. P. Levis for Clyde Steamship Company and Mallory Steamship Company.

Report Proposed by Fred N. Oliver, Examiner

Complainants are the Houston Cotton Exchange and Board of Trade, Galveston Cotton Exchange and Board of Trade, Galveston Commercial Association, Dallas Cotton Exchange and the Oklahoma State Cotton Exchange, corporations. They allege that the rail-and-water rates on cotton from points in Oklahoma through the Texas ports to points in the northeastern portion of the United States [fol 37] and eastern Canada are unjust and unreasonable. The Commission is asked to prescribe reasonable joint rates through the Texas ports. Rates will be stated in cents per 100 pounds, and are those in effect prior to January 1, 1922.

Oklahoma is an important cotton state with a normal production of about one million bales or almost one-tenth of the total of the United States. Most of the cotton is raised in the southern half of the state. The destination territory covered by this complaint includes points in eastern trunk line and New England territories and in eastern Canada; for the purposes of this report they will be designated collectively as Seaboard territory. Seaboard territory consumes about 40 to 45 per cent of all cotton used in the United States.

The four important carriers traversing the cotton section of Oklahoma are the Missouri, Kansas & Texas; the Chicago, Rock Island & Pacific; the St. Louis-San Francisco; and the Santa Fe System, composed of the Atchison, Topeka & Santa Fe, and the Gulf, Colorado & Santa Fe. They will be designated the Katy, the Rock

Island, the Frisco and the Santa Fe, respectively. The principal rail-and-water route to Seaboard is via rail to Galveston, and thence to New York via the Mallory Steamship line or the Southern Pacific Company-Atlantic Steamship lines, hereinafter called the Mallory line and the Morgan line, respectively. The all-rail routes are through St. Louis, Mo., or Memphis, Tenn., or Chicago, Ill. The Santa Fe and the Katy reach the Mississippi River crossings and also Galveston; the Frisco and the Rock Island have direct lines only to the river crossings. While the rates through Texas ports were attacked, the evidence was confined to the rates through Galveston.

No joint rail-and-water rates are in effect from Oklahoma through Galveston to Seaboard. To New York, the rates are constructed of the local rail rate to Galveston, and the water rate to destination. [fol. 38] To other points in Seaboard territory, the rates are made by adding to the New York rate, the rail rates beyond. Joint, all-rail rates, originally based on the combination of the local rates to and from St. Louis, are in effect from Oklahoma to these same destinations. As the result of the various general increases, the combinations are now higher than the joint rates. The rate from most points in Oklahoma to both Galveston and St. Louis is $1.15; the water rate from Galveston to New York is 50 cents. The bulk of the cotton moving, both by all-rail and rail-and-water, is compressed in transit at carrier's cost, and rates referred to herein are those applicable to that character of movement.

The rail-and-water rates through Galveston are attacked not as unreasonable per se but as being unreasonably high in comparison with the all-rail rates. Complainants contend that defendants should equalize the rail-and-water rates with the all-rail rates by establishing rates 4 cents under those by all-rail. As the water rates are uninsured, this differential is necessary to pay the cost of insurance.

The basis of the complaint is chiefly the element of distance. In computing the distances from Galveston to New York, complainants assume three water miles to be equivalent to one rail-mile, and for the purpose of this comparison, the distance from Galveston to New York, 2,180 miles, is assumed to be equivalent to 727 rail miles. Using this constructive mileage, distances from southern Oklahoma via Galveston to most destinations in Seaboard territory are less than all-rail through St. Louis, although to points in western New York and the Province of Ontario, the distances are somewhat greater.

The distance from a point in each county in southern Oklahoma is computed to Galveston and to St. Louis via the shortest route. The average distance to Galveston is 493 miles, and to St. Louis, 554 miles. From Oklahoma City, Ada and Chickasha, representative points in the cotton section, distances to Galveston are 513, 450 [fol 39] and 483 miles, respectively, and to St. Louis, 543, 537 and 582 miles, respectively. The distances from St. Louis to New York, Albany, N. Y., Boston, Mass., and Baltimore, Md., as shown of record, are 1,068, 1,030, 1,230 and 935 miles, respectively.

Distances via all-rail routes through St. Louis to representative eastern points are contrasted in the following table, compiled from the record, with distances through Galveston:

	To—							
	New York.		Albany.		Boston.		Baltimore.	
From—	All rail.	Rail and water.	All rail.	Rail and water.	All rail.	Rail and water.	All rail.	Rail and water
Oklahoma City..	1,611	1,240	1,573	1,382	1,773	1,473	1,478	1,428
Chickasha	1,650	1,210	1,612	1,352	1,812	1,443	1,517	1,398
Ada	1,605	1,177	1,567	1,319	1,767	1,410	1,472	1,365

The all-rail rate from most Oklahoma points to New York is $1.665; the rail-and-water rate is $1.65. To points west of New York the all-rail rates are lower; to practically all of New England they are blanketed. The rail-water-and-rail rates are made up of the rates to New York and the local rates beyond, and as distances from the port increase, the local rates also increase. While the all-rail and the rail-and-water rates are about equalized to New York, the rail-and-water rates to other points in Seaboard vary in amount according to the distance from New York and are higher than the all-rail. To points most distance from New York, the rail-and-water rates reach the maximum excess of 56 cents above the all-rail rates.

Below are shown the all-rail and the rail-and-water rates to representative destinations:

	To—							
	New York.		Albany.		Boston.		Baltimore.	
From—	Rail.	Gulf.	Rail.	Gulf.	Rail.	Gulf.	Rail.	Gulf
Oklahoma City..	166.5	165	159.5	195	169.5	191.5	163.5	203
Chickasha	166.5	165	159.5	195	169.5	191.5	163.5	203
Ada	166.5	165	159.5	195	169.5	191.5	163.5	203

Other differences exist in favor of the all-rail rates. Unloading charges at Galveston are not included in the rail-and-water rates and [fol. 40] are borne by shippers. All-rail rates are any-quantity rates. The rail-and-water rates to points other than New York are 20,000 pounds minimum, evidently due to the requirements of the eastern rail carriers. The l. c. l. rates to these points are from .5 to 14.5 cents higher than the carload rates.

Complainants say that the principle of maintaining rail-and-water rates between Seaboard and points in Oklahoma and Texas less than all-rail rates is well established. Rail-and-water rates on cotton from Texas points to these destinations were voluntarily established in 1921, observing a maximum of 8 cents under the all-rail rates. They were initiated by the Southern Pacific rail line in connection with its boat line; most of the other Texas carriers now participate. The all-rail rates from Texas common points to Seaboard are normally 4 cents higher than from Oklahoma. Rail-and-water rates from Oklahoma 4 cents less than all-rail would about equal the present rail-and-water rates from most Texas common points, although the average rail haul from the latter to Galveston

is probably 200 miles less than from Oklahoma. While class rates and rates on many commodities, substantially less than all-rail, are in effect from Seaboard to Oklahoma via Galveston, only a few joint rail-and-water similarly constructed apply in the opposite direction. The Oklahoma carriers participate in joint rates on traffic to Oklahoma, but have apparently insisted on moving the traffic which originates there, by the all-rail routes. Rail-and-ocean rates, equal to the all-rail rates, are in effect from Oklahoma through the south Atlantic ports to a few points in Seaboard.

Complainants assert that in 1910 or 1911 joint rail-and-water rates 2 cents less than those by all-rail were in effect from Oklahoma to New York, but at that time water rates from Galveston to New York were reduced, resulting in combinations lower than the through rates. The latter were eventually canceled. The information re- [fol. 41] specting these joint rates is indefinite and cannot be verified. The water rate was increased in 1917 or 1918, resulting in the rail-and-water rates becoming higher than the all-rail. Under general order 28, the through all-rail rates were advanced only 15 cents per 100 pounds, while the 15-cent increase was applied to both factors of rail-and-water rates, which further widened the difference between the all-rail and rail-and-water rates.

The Morgan line and the Mallory line, with their eastern rail connections, are willing to participate in joint rates, and, in fact, attempted to effect their establishment, but the Oklahoma carriers refused to enter into such an arrangement preferring to move the traffic through river gateways. The steamship lines state that a greater differential than 4 cents is necessary to attract the traffic, as a movement without transfers has an advantage.

The Oklahoma State Cotton Exchange took no active part in the proceeding. The other complainants are cotton exchanges at Dallas, Houston, and Galveston, whose members purchase cotton within Oklahoma. Joint rates applying through Texas would enable them to better concentrate their business. Cotton growers in Oklahoma desire joint rates through Texas ports in order to interest buyers there. Other reason- advanced for the joint rates via the Gulf are: Diversity of routes; movement by water more dependable than by rail; and time of arrival is more certain.

The burden of the defense was assumed by the Rock Island and the Frisco. Their principal objection to the establishment of joint rates is that it would deprive them of the long haul. Because of the expense incurred in assembling the cotton and other conditions peculiar to that traffic, they contend that the nonapplication of joint rates via the Texas ports is warranted. About 90 per cent of the cotton originates at small points, from which it is handled in any amount to the compress, an average distance of 60 to 70 miles. This requires a large number of cars and to conserve equip- [fol. 42] ment, compression is ordinarily required at the first compress point. The assembling cost is estimated to be 50 per cent of the total transportation cost of cotton over the Rock Island, for which it receives no extra compensation. In order to be compensated for this expense, the carriers are unwilling for the cotton originating

on their lines to move except over routes where they receive the long haul.

Cotton is an important traffic to the Oklahoma carriers, from which they receive a large revenue. Fifty per cent of the cotton is for export moving through the gulf, and the majority of the remainder goes to Seaboard territory. So at present the Rock Island and Frisco are denied the long haul on 50 per cent of this traffic. To the ports, the Rock Island receives a haul to Fort Worth or Dallas, to which the distances from the compress points range from 112 to 388 miles. From the same points to Memphis, hauls range from 366 to 642 miles, to Chicago 907 to 1,172 miles, to St. Louis 691 to 956 miles.

Defendant say that the present routes adequately serve the needs of the shippers and that individual shippers in Oklahoma have made no requests for joint rates via the gulf. Numerous routes are available east of river gateways, all of which are more direct than through Galveston. Other objections urged against the establishment of joint rates are: That the transfer expense at both ports must be absorbed, and that there is already a heavy cotton movement at Galveston during the fall with an empty return movement northbound, which the proposed joint rates would increase.

Rail-and-water rates as asked for cannot be constructed without fourth section relief as to destination territory. The rail-and-water rates proposed would become lower west of New York to meet the lower all-rail rates, and would result in departures from the long and-short-haul clause.

Complainant's case is based wholly on the proposition that rail-and-water rates should be equalized with the all-rail rates. They [fol. 43] arbitrarily assume that three water miles are equivalent to one rail mile for rate making purposes. Although constructive mileage on this basis has been used for division purposes along the Atlantic coast, it has not been used uniformly, nor has it, so far as this record shows, been used in connection with traffic between New York and Galveston. While there are certain expressions of opinion as to the cost of transportation by water as compared to the cost by rail, there is no evidence as to the relative cost of service via the rail-and-water routes through Galveston.

Ordinarily rail-and-water rates are lower than the all-rail rates and necessarily so to attract the traffic, but there is no principle that requires such a relationship in all cases. Nothing appears of a sufficient definite nature to justify a finding that any fixed differential should be established between the rates via the all-rail routes and those applying partly by rail and partly by water. The majority of the carriers voluntarily participate in joint rail-and-water rates from Texas. The practical effect of complainants' prayer would be the establishment of the Texas common point rates from Oklahoma. The carriers should not be compelled to indefinitely project into the interior rail-and-water rates based on the all-rail rates. The record does not warrant a finding that these rates are in themselves unreasonable, and their equalization from a competitive standpoint is a question primarily for the carriers.

The Commission should find that the rail-and-water rates on cotton from Oklahoma points to points in the northeastern portion of the United States and eastern Canada are not unreasonable, and dismiss the complaint.

[fol. 44] EXHIBIT C TO BILL OF COMPLAINT

No. 13418

HOUSTON COTTON EXCHANGE & BOARD OF TRADE et al.

v.

ARCADE & ATTICA RAILROAD CORPORATION et al.

Submitted February 26, 1923. Decided January 23, 1924

1. Rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to points in New England territory found unreasonable. Establishment of reasonable maximum joint rates required.

2. Rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to other points in northeastern United States and eastern Canada found not unreasonable.

R. C. Fulbright, F. R. Dalzell, E. H. Thornton, and J. L. West for complainants.

A. B. Enoch, G. B. Ross, J. S. Hershey, T. L. Bothwell, J. E. Bailey, C. W. Owen, and J. M. Strupper for southwestern rail lines.

William Simmons for Southern Pacific Company-Atlantic Steamship Lines, and W. P. Levis for Clyde-Steamship Company and Mallory Steamship Company.

Report of the Commission

Division 4, Commissioners Meyer, Eastman, and Potter

By DIVISION 4:

Exceptions were filed by complainants to the report proposed by the examiner, and the case was orally argued. Our conclusions differ from those recommended by the examiner.

Complainants are the Houston Cotton Exchange & Board of Trade, Galveston Cotton Exchange & Board of Trade, Galveston Commercial Association, Dallas Cotton Exchange, and the Oklahoma State Cotton Exchange, corporations. They allege that the rail-and-water and rail-water-and-rail rates on cotton from points in Oklahoma through [fol. 45] the Texas ports to points in the northeastern portion of the United States and eastern Canada are unjust and unreasonable. We are asked to prescribe reasonable joint rates by way of the Texas ports. Rates will be stated in cents per 100 pounds, and are those

in effect immediately prior to January 1, 1922, except where otherwise noted.

Oklahoma is an important cotton State with a normal production of about 1,000,000 bales. Most of the cotton is raised in the southern part of the State. The destination territory includes points in eastern trunk line and New England territories and in eastern Canada. For the purposes of this report it will be designated as seaboard territory. This territory consumes about 40 to 45 per cent of the cotton used in the United States.

The four important carriers traversing the cotton section of Oklahoma are the Missouri, Kansas & Texas; the Chicago, Rock Island & Pacific; the St. Louis-San Francisco; and the Santa Fe System, composed of the Atchison, Topeka & Santa Fe, and the Gulf, Colorado & Santa Fe. They will be designated the M. K. & T., the Rock Island, the Frisco, and the Santa Fe, respectively. The principal rail-and-water route to seaboard territory is rail to Galveston and thence to New York by the Mallory Steamship line or the Southern Pacific Company-Atlantic Steamship Lines, hereinafter called the Mallory line and the Morgan line, respectively. The all-rail routes are through St. Louis, Mo., Memphis, Tenn., and other Mississippi River crossings. The Santa Fe and the M. K. & T. reach the river crossings and also Galveston; the Frisco and the Rock Island have direct lines only to the river crossings. While the rates through Texas ports are attacked, the evidence is confined to the rates through Galveston.

No joint rail-and-water rates are in effect on cotton from Oklahoma through Galveston to seaboard territory. To New York, the rate is composed of the local rail rate to Galveston, the port-to-port rate beyond, and a loading charge. To other points in seaboard territory, the rates are made by adding to the New York rate the rail rates beyond. Joint all-rail rates, based originally on the combination of local rates to and from St. Louis, are in effect Oklahoma to the destination territory. As the result of the various general increases the combinations through the river gateways are now higher than the joint rates. The bulk of the cotton moving, whether all-rail route or rail-and-water routes, is compressed in transit at carrier's [fol. 46] cost. The rates referred to herein are those applicable to that character of movement.

Complainants in effect seek equalization of the rail-and-water and rail-water-and-rail rates with the all-rail rates by asking us to establish rates by water 4 cents under the all-rail rates to the same destinations. As the water rates are uninsured, they state this differential is necessary to pay the cost of insurance.

In computing the distance from Galveston to New York, complainants assume 3 water miles to be equivalent to 1 rail mile. On this basis the distance from Galveston to New York, 2,180 miles, is assumed to be equivalent to 727 rail miles. Using this constructed mileage the distances from southern Oklahoma via Galveston, to most destinations in seaboard territory are less than the actual distances all rail through St. Louis, although to points in western New York and the Province of Ontario the constructive distances by the water route are somewhat greater.

Taking a point in each county of southern Oklahoma, complainants show the average short-line distance to Galveston to be 493 miles, and to St. Louis 554 miles. From Oklahoma City, Ada, and Chickasha, representative points in the cotton section, the distances to Galveston are 513, 450, and 483 miles, respectively; and to St. Louis 543, 537, and 582 miles, respectively. The distances from St. Louis to New York, Albany, N. Y., Boston, Mass., and Baltimore, Md., as shown of record, are 1,068, 1,030, 1,230 and 935 miles respectively.

Distances via all-rail routes through St. Louis to representative eastern points are contrasted in the following table, compiled from complainants' exhibits of record, with the constructive distances through Galveston:

	To—							
	New York.		Albany.		Boston.		Baltimore.	
From—	All rail.	Rail and water.	All rail.	Rail and water.	All rail.	Rail and water.	All rail.	Rail and water.
Oklahoma City..	1,611	1,240	1,573	1,382	1,773	1,473	1,478	1,428
Chickasha	1,650	1,210	1,612	1,352	1,812	1,443	1,517	1,398
Ada	1,605	1,177	1,567	1,319	1,767	1,410	1,472	1,365

From most Oklahoma points a rate of $1.15 applies to both St. [fol. 47] Louis and Galveston; from Galveston to New York the rate by water is 50 cents. The all-rail rates from the Oklahoma points to New York is $1.665; the rail-and-water rate is $1.65. To points west of New York City the all-rail rates are lower; to practically all of New England a blanket rate of $1.695 applies. While the all-rail and the rail-and-water rates to New York are approximately the same, the rates by water to other points in seaboard territory vary in amounts according to the distance from New York and are higher than the all-rail rates. To the points more distant from New York City the rail-water-and-rail rates reach a maximum of 56 cents above the all-rail rates.

Below are shown the all-rail and the combination rates via Galveston to representative destinations:

	To—							
	New York.		Albany.		Boston.		Baltimore.	
From—	Rail.	Galveston.	Rail.	Galveston.	Rail	Galveston.	Rail	Galveston.
Oklahoma City.	$1.665	$1.65	$1.595	$1.95	$1.695	$1.915	$1.635	$2.03
Chickasha	1.665	1.65	1.595	1.95	1.695	1.915	1.635	2.03
Ada	1.665	1.65	1.595	1.95	1.695	1.915	1.635	2.03

Other differences exist in favor of the all-rail rates. Unloading charges at Galveston are not included in the rail-water-and-rail rates, but are borne by shippers. The all-rail rates are any-quantity rates. The rail-water-and-rail rates shown above to points other than New York City are subject to a 20,000-pound minimum, evidently due

to the requirements of the eastern rail carriers. The less-than-carload rates to these points are from 0.5 to 14.5 cents higher than the carload rates.

Rail-water-and-rail rates on coton from Texas common points to seaboard territory were voluntarily established in 1921, observing a maximum of 8 cents under the all-rail rates. They were initiated by the Southern Pacific rail line in connection with its boat line. This action on the part of the Southern Pacific was followed by similar action on the part of most of the other Texas carriers. The all-rail rates from Texas common points to seaboard territory are normally 4 cents higher than from Oklahoma. Rail-water-and-rail rates from Oklahoma 4 cents less than the all-rail rates would about [fol. 48] equal the present rail-water-and-rail rates from most Texas common points, although the average rail haul from the latter points to Galveston is probably 200 miles less than from Oklahoma. While joint class and commodity rates are in effect from seaboard territory to Oklahoma via Galveston, only a few joint rail-and-water and rail-water-and-rail rates apply in the opposite direction. Rail-water-and-rail rates apply the all-rail rates, are in effect from Oklahoma through the south Atlantic ports to a few points in seaboard territory.

Complainants assert that prior to 1910 or 1911 joint rail-water-and-rail rates 2 cents less than those all rail were in effect from Oklahoma to New York, but that about that time the water rates from Galveston to New York were reduced, resulting in combinations lower than the joint rates. The latter were eventually canceled. The information respecting these joint rates is indefinite and can not be verified. In 1917 or 1918 the rate by water was increased, resulting in the rail-and-water rates becoming higher than the all-rail rates. Under General Order No. 28, the all-rail rates were advanced only 15 cents per 100 pounds, while the 15-cent increase was applied to both factors of the combination rates via Galveston, which further widened the spread between the all-rail and the rail-and-water rates.

The Morgan line and the Mallory line, with their eastern rail connections, are willing to participate in joint rates, and in fact, attempted to effect their establishment, but the Oklahoma carriers refused to enter into such an arrangement, preferring instead to move the traffic through the river gateways. The steamship lines state that a greater differential than 4 cents is necessary to attract the traffic, as a movement without transfers has an advantage.

The Oklahoma State Cotton Exchange took no active part in the proceeding. The other complainants are cotton exchanges at Dallas, Houston, and Galveston, whose members purchase cotton within Oklahoma. Joint rates applying by way of Texas ports would enable them to better concentrate their business. Cotton growers in Oklahoma desire joint rates through Texas ports in order to interest buyers there. Other reasons advanced for the joint rates via the Gulf ports are diversity of routes, movement by water more dependable than by rail, and time of arrival more certain.

The burden of the defense was assumed by the Rock Island and the Frisco. Their principal objection to the establishment of joint

[fol. 49] rates is that it would deprive them of the long haul. Because of the expense incurred in assembling the cotton and other conditions peculiar to that traffic, they contend that the nonapplication of joint rates via the Texas ports is warranted. About 90 per cent of the cotton originates at country points, from which it is moved in small lots to the compresses, an average distance of 60 to 70 miles. This requires a large number of cars, and to conserve equipment compression is ordinarily required at the first compress point. The assembling cost is estimated to be 50 per cent of the total transportation cost of cotton over the Rock Island, for which it receives no extra compensation. In order to be compensated for this expense, the carriers are unwilling for the cotton originating on their lines to move except over routes where they receive the long haul.

Cotton is an important item of traffic to the Oklahoma carriers, from which they receive a large revenue. Fifty per cent of the cotton is for export moving through the Gulf. The majority of the remainder goes to seaboard territory. Thus, the Rock Island and Frisco are denied the long haul on 50 per cent of this traffic. On traffic to the ports, the Rock Island obtains a haul as far as Fort Worth or Dallas, to which the distances from the compress points range from 112 to 388 miles. From the same points to Memphis, the hauls range from 366 to 642 miles; to Chicago 907 to 1,172 miles; and to St. Louis 691 to 953 miles.

Defendants say that the present routes adequately serve the needs of the shippers and that individual shippers in Oklahoma have made no requests for joint rates via the Gulf. Numerous routes are available east of the river gateways, all of which are more direct than through Galveston. Other objections urged against the establishment of joint rates are that the transfer expense at both ports must be absorbed, and that there is already a heavy cotton movement to Galveston during the fall with an empty-return movement northbound, which the proposed joint rates would increase.

Certain reductions have recently been made in both the all-rail and the combination rates via Galveston from Oklahoma producing points to seaboard territory. For example, the all-rail rates from Oklahoma City, Chickasha, and Ada have been since July 1, 1923, $1.50 to New York, $1.465 to Baltimore, $1.435 to Albany, and $1.535 to Boston. On the same date the rate from the Oklahoma [fol. 50] points to Galveston became $1.01. On July 15, 1923, the rate from Galveston to New York was reduced to 35 cents with contemporaneous reductions in the water-and-rail rates to interior seaboard points. As a result of these reductions the combinations on Galveston from the Oklahoma points named are now $1.40 to New York, $1.65 to Baltimore, $1.595 to Albany, and $1.625 to Boston. Included in the latter rates is a loading charge of 4 cents. A 2-cent charge for wharfage is absorbed in the rate. Under the present adjustment there is an advantage of 10 cents in favor of the combination rate via Galveston over the all-rail rate to New York. To the other destinations named the spread between the

all-rail rates and rail-water-and-rail rates has been reduced, in the case of Albany from 35.5 cents to 16 cents, at Boston from 22 cents to 9 cents, and at Baltimore from 39.5 cents to 18.5 cents.

In measuring the water haul in terms of rail miles, complainants base their computations upon an equation of 3 miles of water haul to 1 mile by rail. In Reduced Rates from New York Piers, 81 I. C. C., 312, we adopted for the purposes of that case the 3 to 1 ratio in determining the construction mileage in connection with traffic between New York and Galveston. No contention was made by the defendants that the all-rail rates are not on a proper basis. It would appear that the rail-and-water rates on cotton from Oklahoma to New England territory should be lower than the all-rail rates. The policy of the law is "to promote, encourage, and develop water transportation," and to that end the law now authorizes us to require the establishment of through rail-and-water routes and joint rates which may short-haul a rail carrier.

A different situation exists with respect to rates to other points in northeastern United States. Rail-water-and-rail rates to those destinations can not be constructed on the basis sought without fourth-section relief. The rail-water-and-rail rates would have to be lower to points west of New York City to meet the lower all-rail rates to those points, and would result in departures from the long-and-short-haul provision of the act. While not holding that the water and rail routes to those points are excessively circuitous, nothing appears of a sufficiently definite nature to justify a finding that the rates themselves are unreasonable or that any fixed differential should be established between the rates via the all-rail routes and those applying partly by rail and partly by water. In the absence of such a showing, we cannot compel the carriers to project [fol. 51] indefinitely into the interior rail-and-water rates based on the all-rail rate. We are also left in doubt by the record whether rail-and-water rates to those destinations are in the public interest.

Upon all the facts of record we are of opinion and find that it is desirable in the public interest that the defendants should establish joint rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to points in New England territory, and that the existing rates for such transportation are, and for the future will be, unreasonable to the extent they exceed or may exceed, rates constructed by the deduction of 4 cents from the present all-rail rates. We further find that the rail-and-water and the rail-water-and-rail rates on cotton from Oklahoma points to other points in the northeastern portion of the United States are not unreasonable. We are without authority to require the establishment of joint through rates to points in Canada.

No order will be entered at this time, but defendants will be expected to comply with our findings within 90 days from the service of our report, failing which the matter may be again brought to our attention.

By the commission, division 4.

George B. McGinty, Secretary. (Seal.)

[fol. 52] EXHIBIT D TO BILL OF COMPLAINT

No. 13418

HOUSTON COTTON EXCHANGE & BOARD OF TRADE et al.

v.

ARCADE & ATTICA RAILROAD CORPORATION et al.

Submitted July 16, 1924. Decided November 4, 1924

The commission has power to establish through routes and to prescribe maximum rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to points in New England territory. Findings in original report, 87 I. C. C. 392, affirmed.

R. C. Fulbright, F. R. Dalzell, E. H. Thornton, and J. L. West for complainants.

A. B. Enoch, G. B. Ross, J. S. Hershey, T. L. Bothwell, J. E. Bailey, C. W. Owen, and J. M. Strupper for southwestern rail lines.

William Simmons for Southern Pacific Company, Atlantic Steamship Lines; and W. P. Levis for Clyde Steamship Company and Mallory Steamship Company.

Report of the Commission on Further Argument

By the COMMISSION:

In our original report, 87 I. C. C., 392, we found that it was desirable and in the public interest that the defendants should establish joint rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to points in New England territory and that the rates would be unreasonable to the extent that they exceeded rates constructed by the deduction of 4 cents from the all-rail rates. The principal rail-and-water routes to seaboard territory are rail to Galveston, Tex., thence to New York, N. Y., via the Mallory Steamship Line or the Southern Pacific Company, Atlantic Steamship Lines, hereinafter called the Mallory Line and the Morgan Line, respectively. The all-rail routes are through St. Louis, Mo., Memphis, Tenn., and other Mississippi River crossings. We further found that the rail-and-water and rail-water-and-rail rates on cotton from Oklahoma [fol. 53] points to other points in the northeastern portion of the United States were not unreasonable. Also that we were without authority to require the establishment of joint through rates to points in Canada. Defendants were expected to comply with our findings within 90 days from the service of our report, failing which the matter might be again brought to our attention. Upon defendant's petition the proceeding was reopened and further oral argument had. This argument was devoted largely to the discussion of the question of our jurisdiction in the premises.

The Mallory Line is not under the control or management of any rail carrier. The Morgan Line is under the control of the Southern Pacific Company.

Section 1 of the interstate commerce act reads in part as follows:

(1) That the provisions of this Act shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; * * *

(2) The provisions of this Act shall also apply to such transportation * * *, but only in so far as such transportation * * * takes place within the United States.

Section 15 of the act reads in part as follows:

(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charged, (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and the divisions of such rates, fares, or charges as hereinafter provded, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line. * * *

Section 6 reads in part as follows:

(13) When property may be or is transported from point to point [fols. 54-56] in the United States by rail-and-water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the Act to regulate commerce, as amended June eighteenth, nineteen hundred and ten:

(a) To establish physical connection between the lines of the rail carrier and the dock * * *.

(b) To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced.

Defendants contend that the portions of sections 15 and 6 quoted above are qualified by section 1 so that they relate to transportation partly by rail and partly by water only when both are used under a common control, management, or arrangement for a continuous carriage or shipment. But this would lead to the absurd conclusion

that we are enabled to establish a physical connection at a dock between a rail carrier and a water carrier only where the water carrier already has an arrangement for continuous service with the rail line.

We construe paragraph (13-b) of section 6 to confer upon the commission power to establish through routes and maximum joint rates between and over the rail and water lines and with respect to the transportation referred to in the opening paragraph of paragraph (13) of section 6.

No considerations concerning the merits of the case were advanced upon reargument which are not fully covered by the original report. Our original findings are affirmed. Defendants will be expected to comply with these findings within 90 days from the service of this report, failing which the matter may be again brought to our attention.

Chairman Hall dissents.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 57] IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANT THE UNITED STATES—Filed June 8, 1925

United States of America for answer to the petition filed herein against it says:

I, II, III, IV, V. On information and belief this defendant admits the facts alleged in paragraphs I, II, III, IV and V in manner and form as alleged.

VI. Defendant admits the institution before the Commission of the proceeding styled Houston Cotton Exchange & Board of Trade et al. vs. Arcade & Attica Railroad Corporation et al., No. 13418, by the filing of the complaint; it assumes that Exhibit A is a true copy thereof and, subject to verification, admits the same. For the full and true contents of the complaint and the issues sought to be raised thereby defendant refers to the original on file with the Commission. Defendant denies the allegations of paragraph VI with respect to the contents of the complaint and each and every part of the same in manner and form as alleged.

VII. Defendant has no knowledge of the matters and things alleged in paragraph VII, it neither admits nor denies the same, [fol. 58] and in so far as they may become material upon the hearing it will require strict proof thereof.

VIII. Defendant admits that the Commission in accordance with due notice held the hearing referred to which was attended by representatives and counsel representing the parties, and that the examiner filed his proposed report and findings; it assumes that Ex-

hibit B is a true copy thereof and, subject to verification, admits the same. For the full and true contents of the proposed report and findings defendant refers to the original on file with the Commission. Defendant denies the allegations of paragraph VIII with respect to the contents of the proposed report and findings of the Examiner and each and every part of the same in the manner and form as alleged.

IX. Defendant admits the allegation of paragraph IX that the Commission made and entered the report of January 23, 1924; it assumes that Exhibit C is a true copy and, subject to verification, admits the same. As to the remaining allegations of paragraph IX this defendant denies the same in manner and form as alleged. Defendant alleges that the full and true proposed report and findings of the Examiner and the full and true report of the Commission as entered January 23, 1924, will disclose the differences between and similarities of them which may not be determined from mere fragments or excerpts. Defendant alleges that in any event such differences are wholly immaterial to any issue in this controversy.

X. Defendant has no knowledge of the matters and things alleged in paragraph X in manner and form as alleged, it neither admits nor denies the same and in so far as they may become material upon the hearing it will require strict proof thereof.

XI. Defendant admits the allegation of paragraph XI that the Commission made and entered the report of November 4, 1924; it assumes that Exhibit D is a true copy and subject to verification, ad-
[fol. 59] mits the same.

XII. On information and belief this defendant denies the allegations of paragraph XII and each and every part of the same in manner and form as alleged with this exception: defendant admits the Commission entered the three orders dated March 9, 1925, March 28, 1925, and April 29, 1925, respectively, and, subject to verification, the copies set forth in the bill of complaint are true. Defendant alleges that from the face of the report it appears the Commission had duly notified the carriers, including the plaintiffs herein, to comply with the findings of the Commission which they persistently refused to do and the findings of the Commission and notice to comply therewith were being ignored by them.

XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XVII, XXIII, XXIV, XXV, XXVI. Defendant denies the allegations contained in paragraphs XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV and XXVI and each and every part of the same in manner and form as alleged.

Further answering, this defendant alleges that the matters and things set forth in the bill of complaint and sought to be put in issue before the court were all before the Interstate Commerce Commission, were fully heard and determined by it, and were within its power

and authority to hear and determine under the provisions of the Interstate Commerce Act; in its reports in writing with respect thereto, made after full hearing and on due notice to all of the parties, which state its conclusions together with its decision, order or requirement in the premises, the matters and things of which complaint is made were fully considered and foreclosed by findings of fact based on substantial evidence before the Commission of which the parties were advised.

Defendant alleges that the facts set forth in the reports of the [fol. 60] Commission and each and all of the same are true and correct.

Defendant specifically denies—

(a) Any fact or facts alleged in the bill of complaint or any part of the same, which deny, or which seek to deny, any fact or facts found by the Commission.

(b) Any fact or facts alleged in the bill of complaint, or any part of the same, which are inconsistent with any fact or facts found by the Commission.

(c) Any and all inferences of fact from any particular fact or facts alleged in the bill of complaint, or any part of the same, which seek to deny, or which are inconsistent with any fact or facts found by the Commission.

(d) Any fact or facts alleged in the bill of complaint, or any part of the same, which set up, or which seek to set up, matters and things which were not before the Commission.

(e) Any fact or facts alleged in the bill of complaint, or any part of the same, which attack or which seek to attack the action of the Commission, and to show facts other than the Commission has found and declared.

(f) Any allegations in the bill of complaint, or any part of the same, which allege that facts were found by the Commission in its reports and orders which, as shown on the face thereof, were not so found.

(g) Any conclusions of law alleged and insisted upon in the bill of complaint, or any part of the same, which are inconsistent with any conclusions of law held by the Interstate Commerce Commission.

(h) Each and every allegation in the bill of complaint contained not herein specifically admitted or denied.

Wherefore, having fully answered, defendant prays that the bill of complaint be dismissed at the cost of the plaintiffs and for such [fol. 61] other and further order as may be appropriate.

Blackburn Esterline, Assistant to the Solicitor General.
Henry Zweifel, United States Attorney.

[fol. 62] *Duly sworn to by Blackburn Esterline. Jurat omitted in printing.*

[fol. 63] [File endorsement omitted.]

[fol. 64] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANT INTERSTATE COMMERCE COMMISSION—Filed June 6, 1925

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiences in the plaintiffs' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

Answering the opening paragraph and Paragraphs I to V, inclusive, of the bill of complaint, the Commission admits, for the purposes of this suit, that the allegations therein contained are true. [fol. 65] Answering Paragraphs VI to XXVIII, inclusive, of the bill of complaint, the Commission admits and alleges that the proceeding in which it entered the order which plaintiffs seek to enjoin was instituted by the filing of a complaint with the Commission; that an accurate copy of said complaint is attached to the plaintiffs' bill of complaint, marked "Exhibit A," to which said copy, or to the original complaint, the Commission respectfully refers the court for information concerning the allegations contained in said original complaint and the purport of said allegations; that thereafter answers to said complaint were duly filed with the Commission by the defendant carriers named in said complaint, among which said defendant carriers the plaintiffs in this suit were included; and that the proceeding so instituted was entitled Houston Cotton Exchange & Board of Trade et al. v. Arcade & Attica Railroad Corporation et al., and is on the docket of the Commission as No. 13418.

The Commission further admits and alleges that it made and entered and served upon all the defendants in said proceeding, the report of January 23, 1924, which is referred to in Paragraph IX, and made a part of the bill of complaint as "Exhibit C," the "report of the Commission on further argument" of November 4, 1924, which is referred to in Paragraph XI and made a part of the bill of complaint as "Exhibit D," and the three orders, dated respectively [fol. 66] March 9, 1925, March 28, 1925, and April 29, 1925, copies of which are set forth in Paragraph XII of the bill of complaint.

The Commission further admits and alleges that, prior to the making, entering, and serving of said reports and orders, as aforesaid, it accorded to the parties to said proceedings, including plain-

tiffs herein, the full hearings provided for in the interstate commerce act; that at said hearings a large volume of testimony and other evidence bearing upon the matters covered by said reports and orders was submitted to the Commission for consideration, on behalf of said parties, including the plaintiff herein, by their respective counsel; that at said hearings questions relating to said matters were fully argued and submitted to the Commission for determination, on behalf of said parties by their respective counsel, whereupon the Commission determined said matters and made and entered said reports and orders, which included the Commission's decisions, conclusions, orders, and requirements in the premises; that upon the evidence before it, and as shown in and by said reports and orders, the Commission made the findings and stated the conclusions upon which said orders are based.

The Commission further alleges that said findings and conclusions were and are, and that each of them was and is, fully supported and [fol. 67] justified by the issues raised and the evidence before the Commission in said proceeding.

The Commission further alleges that, in making said reports and orders, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including all matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said orders were not made or entered by it either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said orders the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary, contained in said bill of complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in said bill of complaint, in so far as they conflict either with the allegations herein or with the statements or conclusions of fact included in said reports and orders of the Commission, which are hereby referred to and made a part hereof.

All of which matter and things the Commission is ready to aver, [fol. 68-72] maintain, and prove as this honorable court shall direct, and hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by D. W. Knowlton, Assistant Counsel. P. J. Farrell, of Counsel.

Duly sworn to by Balthazar H. Meyer. Jurat omitted in printing.

[fol. 73] IN UNITED STATES DISTRICT COURT

ANSWER OF INTERVENORS HOUSTON COTTON EXCHANGE & BOARD OF TRADE AND DALLAS COTTON EXCHANGE—Filed June 8, 1925

Now come Houston Cotton Exchange & Board of Trade and Dallas Cotton Exchange, hereinafter called intervenors, and with leave of the Court first had and obtained, file this their intervening petition in said cause in defense of and in answer to the bill of complaint heretofore filed in said cause.

I

These intervenors respectfully represent that the bill of complaint filed herein does not state any grounds for equitable relief and does not state equitable grounds which would entitle them to have the benefit of an order from your Honors suspending the enforcement, operation and execution of the order of the Interstate Commerce Commission referred to in said bill and your intervenors respectfully move and pray that said bill be dismissed.

Fulbright, Crooker & Freeman, R. C. Fulbright, Attorneys for Intervenors Houston Cotton Exchange & Board of Trade and Dallas Cotton Exchange.

II

Your intervenors further respectfully represent that the bill of complaint filed in this cause does not state any equitable grounds or other grounds or make any allegations which if true would entitle them to have the benefit of a temporary stay or suspension in whole or in part of the operation of the order of the interstate [fol. 74] Commerce Commission referred to in said bill and respectfully move and pray that the portion of the bill which prays for a temporary restraining order or stay be stricken out and denied.

Fulbright, Crooker & Freeman, R. C. Fulbright, Attorneys for Intervenors Houston Cotton Exchange & Board of Trade and Dallas Cotton Exchange.

III

For further answer to the bill of complaint in this cause, your intervenors respectfully make the following answers:

1. The allegations of Paragraph I of said bill of complaint are admitted.

2. The allegations of Paragraph II of said bill of complaint are neither admitted nor denied.

3. The allegations of Paragraph III of said complaint are denied.

4. The allegations of Paragraphs IV, V, VI, VII, VIII and IX of said complaint are admitted by these intervenors.

5. The allegations of Paragraph X of said complaint are admitted save and except that it is denied that the petitioners set forth as grounds for their petition to re-open said cause any allegations or made any contentions that the Interstate Commerce Commission was without jurisdiction to require the defendants therein, including said petitioners, to establish said joint rates or effect any equalizations or establish any differentials as alleged in said Paragraph X of said bill.

6. The allegations in Paragraph XI are admitted.

7. The allegations in Paragraph XII are admitted save and except that it is denied that the said order was made without notice to plaintiffs or either of them.

8. The allegations of Paragraphs XIII, XIV, XV, XVI, XVII, XVII-, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, and XXVI are denied.

9. The allegations of Paragraps XXVII of said bill are neither admitted nor denied.

[fols. 75-79] IV

These intervenors for further answer to said bill respectfully represent that the evidence introduced in the proceeding before the Interstate Commerce Commission referred to in said bill shows that the said complainants have entered into arrangements with other common carriers defendants in said cause before the Interstate Commerce Commission, for continuous carriage or shipment of property via lines of said plaintiffs and other defendants including the Mallory Steamship Company and the Southern Pacific Company-Atlantic Steamship Lines in interstate commerce partly by railroad and partly by water between points in Oklahoma on the lines of said complainants and points in New York, New England and other states, and the tariffs introduced in evidence in said cause and published by said plaintiffs together with the said Mallory Steamship Company and Southern Pacific Company-Atlantic Steamship Lines and others show that the said plaintiffs participated in the transportation of cotton originating in the State of Texas but moving through the State of Oklahoma upon and via the lines of the plaintiffs in this cause in Interstate Commerce to points in New York, Massachusetts and other points under an arrangement for continuous carriage partly by railroad and partly by water, and that the said plaintiffs in this cause and said other defendants in said proceedings before the Interstate Commerce Commission are subject to the jurisdiction of the Commission and that the Commission has full power, authority, and jurisdiction to enter its orders in such proceedings in the manner and form as set forth in the said bill of complaint.

Wherefore these intervenors respectfully move and pray the Court that the bill of complaint filed in this cause be dismissed and that

the Court enter such other and further orders as may seem mete and equitable in the premises.

Fulbright, Crooker & Freeman, R. C. Fulbright, Attorneys for Intervenors Houston Cotton Exchange & Board of Trade and Dallas Cotton Exchange.

[fol. 80] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF ERNEST D. MILLS

STATE OF ILLINOIS,
County of Cook, ss:

Ernest D. Mills being first duly sworn on oath deposes and says that he resides in Chicago and is employed by The Chicago, Rock Island and Pacific Railway Company; that he has been in the traffic department of said company for eighteen (18) years and in the rate department of the General Freight Office at Chicago for six (6) years; that he is now and for many years past has been familiar with tariffs carrying rates on cotton and other commodities moving over the rails of said railway company.

Further affiant states that the rates shown on the statement attached hereto are the rates on file with the Interstate Commerce Commission on cotton and were the rates per 100 pounds in effect and applicable to the transportation of cotton to and from the points set out on the respective dates specified.

Further affiant saith not.

E. D. Mills.

Subscribed and sworn to before me this 6th day of June, A. D. 1925. W. J. Gedl, Notary Public. My commission expires Nov. 16, 1925. (Seal.)

[fol. 81]

EXHIBIT TO TESTIMONY OF ERNEST D. MILLS

Cotton (Any Quantity)

From—		To— New York City To stl.	Arb.	Thru	Boston To stl.	Arb.	Thru	Bangor, Maine To stl.	Arb.	Thru
Howe, Okla.....	12-31-21	100 15L	51.5	1.53	1.015	54.5	1.56	1.015	58.5	1.60
	4-22-22	.96	46.5	1.445	.96	50.	1.48	.96	50.	1.48
	7- 1-22	.96	46.5	1.425	.96	50.	1.46	.96	50.	1.46
	7- 1-23	.945	46.5	1.41	.945	50.	1.445	.945	50.	1.445
	1-23-24	.945	46.5	1.41	.945	50.5	1.45	.945	50.5	1.45
	3-28-25	.945	46.5	1.41	.945	50.5	1.45	.945	50.5	1.45
Enid, Okla.....	12-31-21	1.15	51.5	1.665	1.15	54.5	1.695	1.15	58.5	1.735
Okla. City.....	4-22-22	1.035	46.5	1.52	1.035	50.	1.555	1.035	5.0	1.555
Terral	7- 1-22	1.035	46.5	1.50	1.035	50.	1.535	1.035	5.0	1.535
Waurika, Okla.....	7- 1-23	1.035	46.5	1.50	1.035	50.	1.535	1.035	5.0	1.535
	1-23-24	1.035	46.5	1.50	1.035	50.5	1.54	1.035	50.5	1.54
	3-28-25	1.035	46.5	1.50	1.035	50.5	1.54	1.035	50.5	1.54
Clinton, Okla.....	12-31-21	1.18	51.5	1.695	1.18	54.5	1.725	1.18	58.5	1.765
	4-22-22	1.06	46.5	1.545	1.06	50.	1.58	1.06	50.	1.58
	7- 1-22	1.06	46.5	1.525	1.06	50.	1.56	1.06	50.	1.56
	7- 1-23	1.06	46.5	1.525	1.06	50.	1.56	1.06	50.	1.56
	1-23-24	1.06	46.5	1.525	1.06	50.5	1.56	1.06	50.5	1.565
	3-28-24	1.06	46.5	1.525	1.06	50.5	1.56	1.06	50.5	1.565

[fol. 82] IN UNITED STATES DISTRICT COURT

OPINION—Filed June 17, 1925

Action to Restrain Interstate Commerce Commission from Putting Into Effect a Rate

Before Circuit Judge Foster and District Judges Estes and Atwell

Lassiter, Harrison & Pearson, N. G. Roberts & A. B. Enoch, Gorce, Odell & Allen, Fort Worth, Texas, for the Plaintiffs.

P. J. Farrell & D. W. Knowlton, Washington, D. C., for the Interstate Commerce Commission.

Blackburn Esterline, Washington, D. C., Assistant to the Solicitor General of the United States; Mr. Fulbright, Houston, Texas, for Houston, Dallas and Oklahoma Cotton Exchanges, intervenors.

Opinion by District Judge Atwell

The bill seeks an interlocutory restraining order, and, the writer called to his assistance Circuit Judge Foster, and, District Judge Estes. Under the amendment to the judicial act of February 13th, 1925, it is necessary that the cause on its merits must be tried before three judges, therefore, all counsel during the hearing agreed that the hearing should be considered as a hearing on the merits.

The record made before the Interstate Commerce Commission was introduced. There were some additions to that testimony.

[fol. 83] Complaint is made because the order of the Interstate Commerce Commission to use the all rail rate from Oklahoma to New England points as a relating rate for the promulgation of a rail, water and rail rate, between the same terminii.

That is to say, the commission found that it would cost four cents to insure the part water rate, and, it therefore, ordered the same rate for rail, water and rail, as for all rail, less four cents. It is maintained that this is not the fixing of a reasonable rate in the manner and form authorized by the law; and that there was no sufficient evidence before the commission to ascertain whether the all rail rate was a reasonable rate, and, also to ascertain whether the rail, water and rail rate would be reasonable. Therefore, that the rate ordered is arbitrary and unjustifiable.

It is also maintained that the commission was without power to fix a rate partly by rail and partly by water.

1

The Interstate Commerce act (February 4th, 1887, amended June 29th, 1906, April 13th, 1908, June 18th, 1910, February 17th, 1917, March 2nd, 1917, May 29th, 1917, August 10th, 1917, and, February 28th, 1920), applies to common carriers engaged in

"the transportation of passengers or property wholly by railroad, or, partly by railroad and partly by water, when both are used under

a common control, management, or arrangement for a continuous carriage or shipment." (Sec. 1, par. 1, subdivision A.)

A part of paragraph 3 of section 15, of the act reads as follows:

"The commission may, and, it shall, whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, es-[fol. 84] tablish true routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charges, (or, in the case of a through rate where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through rates shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line."

Paragraph 13 of section 6 provides:

"When property may be or is transported from point to point in the United States by rail and water through the Panama Canal, or otherwise, the transportation being of a common carrier or carriers, and not entirely within the limits of a single state, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the act to regulate commerce, as amended June 18th, 1910."

Then follow subdivisions a, b, c and d, which authorize the commission to establish physical connection between lines of a rail carrier and a dock; to establish through routes and maximum joint rates between and over such rail and water lines; to establish proportional rates or maximum or minimum, or maximum and minimum, proportional rates for such rail and water carriers; and when any rail carrier, subject to the act, enters into arrangement with any water carrier, operating from a port in the United States, the commission may require such railway to enter into similar arrangements with any and all other lines of ships operating from the same port.

[fol. 85] Subdivision 4 of section 15, provides:

"In establishing any such through route the commission shall not (except as provided in section 3, and except where one of the carriers is a water line), require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad."

Section 500 of the transportation act of 1920 reads in part, as follows:

"It is hereby declared to be the policy of congress to promote, encourage, and develope water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation."

The Morgan line is owned and controlled by the Southern Pacific Railway; the Malloy line is an independent concern. Over both of these lines there was, at the time of the entering of the order which is complained of, an "arrangement" for jointly transporting freight from Oklahoma points to New England—by rail and water, that is, there were established rates for such service.

These excerpts from the law, though not claimed to be exhaustive, and, this suggestion from the evidence seems to justify the commission in taking jurisdiction.

2

The record that was before the Interstate Commerce Commission shows that certain cotton exchanges and boards of trade "complained" to the commission in the year 1921, and sought a cotton and linters rate partly by rail and partly by water from Oklahoma to the northeastern part of the United States and eastern Canada. The complaint, after answers, was set for hearing early in 1922 before an examiner. Upon the examiner's report a hearing was had before the Interstate Commerce Commission. The complainants were successful only in the securing of a rate from Oklahoma to New England territory. The order of the commission provided that the de-[fol. 86] fendants, including the plaintiffs here, "should establish joint rail and water and rail water and rail rates on cotton from Oklahoma points to points in New England territory; that the existing rates for such transportation are, and, for the future will be unreasonable to the extent they exceed, or may exceed, rates constructed by the deduction of four cents from the present all rail rates," and, "that the rail and water and the rail and water and rail rates on cotton from Oklahoma points to other points in the Northeastern portion of the United States are not unreasonable." This is the order the Commission entered.

A re-hearing was asked, in which, substantially the same points were presented as are presented in this case.

In May, 1924, the commission denied the petition for rehearing, but it allowed further oral argument in July of the same year. In March, 1925, the commission issued the order complained of. This was followed by assisting orders on March 28th, 1925, and, April 28th, 1925. The order is effective June 15th, 1925.

There were approximately eighty railways cited to appear and included in the order, as well as several steamship lines including the Morgan and Malloy lines.

The proceeding was quite within the jurisdiction of the commission and its carefulness and exhaustive investigation, and, the completeness of the orders issued by it preclude any thought of the

arbitrary, or, of the unreasonable. If that be true, the courts have no power to interfere.

[fol. 87] Seaboard Airline Co. vs. U. S., 254 U. S., 57;
Manufacturers Railway Co., vs. U. S., 246 U. S. 457;
New England Divisions case, 261 U. S., 184;
United States vs. New River Co., 265 U. S., 533.

The criticism that the commission related the rail and water rate to the all rail rate in such a way as to be illegal, is hardly well taken. The commission announced a maximum and allows the carriers, rail, water and rail, to fix their own rate four cents under such maximum—or, as much lower as they may wish.

Similarly formless is the suggestion that there should be any immunity of the port to port water carrier unless such water carrier is controlled by a rail carrier. The entire policy of the law and the exact wording of it preclude such a construction. An "arrangement" is sufficient.

There appearing, to us, no merit in the bill the same is dismissed.

[fols. 88 & 89] In United States District Court

Final Decree—Filed June 9, 1925

The application for a temporary injunction, as prayed for in the bill of complaint filed herein May 24, A. D. 1925 was set for hearing June 8, 1925, at ten o'clock A. M., at the United States Courtroom, Dallas, Texas, and came on for hearing before the Undersigned Judges at said time and place, when came and appeared the plaintiffs by Robert Harrison, W. M. Odell and A. B. Enoch, their solicitors, the defendant, United States of America, by Blackburn Esterline, and Henry Zweifel, United States Attorney its solicitors, the intervenor, Interstate Commerce Commission by D. W. Knowlton, its solicitor, and the other intervenors by R. C. Fullbright, their solicitor, and the said defendants and intervenors having filed their answers herein and by stipulation and agreement the cause having been submitted to the court for final hearing and determination, and the court having considered all of the evidence and heard the argument of counsel for all the parties is of the opinion that the said bill of complaint should be dismissed;

Therefore it is ordered, adjudged and decreed that the bill of complaint in this cause be and the same is hereby dismissed for want of equity at the cost of the plaintiff.

Rufus E. Foster, U. S. Circuit Judge. W. L. Estes, U. S. District Judge. Wm. H. Atwell, U. S. District Judge.

[fol. 90] Bond on Appeal for $500.00—Approved and filed July 3, 1925; omitted in printing

[fol. 91] IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed July 3, 1925

Now come The Chicago, Rock Island and Pacific Railway Company and St. Louis-San Francisco Railway Company, plaintiffs in the above-entitled cause, and, in connection with their petition for appeal, assign the following errors.

The District Court erred:

I

In refusing to hold that the Interstate Commerce Commission was without authority to require plaintiffs to establish joint rates on cotton from Oklahoma via Galveston, Tex., and the boat lines to points in New England territory which shall not exceed 4 cents per 100 pounds lower than the present all-rail rates from and to the same points.

II

In refusing to hold that the Interstate Commerce Commission was without power or authority to establish a relationship or a [fol. 92] fixed relationship between the rates via Galveston and the water routes, and the rates via the all-rail routes to and from the same points.

III

In refusing to hold that the Interstate Commerce Commission was without power or authority to effect an equalization of the rail-water-and-rail rates and the rail-and-water rates with the all-rail rates.

IV

In refusing to hold that the Interstate Commerce Commission was without power or authority to establish a differential or a fixed differential between the rates via the all-rail routes and those applying partly by rail and partly by water.

V

In refusing to hold that questions of equalizing the rail-and-water routes with the all-rail routes and of establishing a differential or a relationship between the rates via the all-rail routes and those applying partly by rail and partly by water were not in issue and that the Interstate Commerce Commission was without authority to determine such questions.

VI

In refusing to hold that the said order, as modified, is not an order establishing reasonable maximum rates or reasonable maximum joint rates.

VII

In refusing to hold that there was no competent evidence before the Interstate Commerce Commission to show what the all-rail rates were from and to the said points on, to-wit, March 9, 1925, or at the time of its second report, or at the time of its first report, or [fol. 93] at any time after the date of the hearing.

VIII

In refusing to hold that there is no competent evidence before the Interstate Commerce Commission from which it may be determined that the proposed rates are reasonable maximum rates.

IX

In refusing to hold that there is no competent evidence before the Interstate Commerce Commission to show that rates for the transportation of cotton via Galveston, Tex., and the boat lines, are, and for the future will be, unreasonable to the extent they exceed, or may exceed rates constructed by the deduction of 4 cents from the present all-rail rates.

X

In refusing to hold that the said order, as modified, is null and void because there is no competent evidence before the Interstate Commerce Commission to support its finding that the rates complained of are unjust and unreasonable.

XI

In refusing to hold that the said order, as modified, is null and void because the evidence did not show the points between which the rates are required to be established and because the tariffs and supplements referred to in the said order were not in evidence.

XII

In refusing to hold that the said order, as modified, is null and void because it requires plaintiffs to establish, maintain and apply said joint rates via Galveston, Tex., and the lines of the Mallory Steamship Company.

XIII

In refusing to hold that the said order, as modified, is null and void because it requires plaintiffs to embrace in the proposed through [fol. 94] routes with the lines of the Mallory Steamship Company substantially less than the entire length of their railroads between the termini of such proposed through routes.

XIV

In refusing to hold that the said order, as modified, is null and void because it requires plaintiffs to establish, maintain and apply the said joint rates via Galveston, Tex., and the lines of the Southern Pacific Company-Atlantic Steamship Lines.

XV

In refusing to hold that the said order, as modified, is null and void because it requires plaintiffs to embrace in the proposed through routes with the lines of the Southern Pacific Company-Atlantic Steamship Lines substantially less than the entire length of their railroads between the termini of such proposed through routes.

XVI

In refusing to hold that the said order, as modified, is null and void and constitutes a taking of the property of plaintiffs, and each of them, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

XVII

In refusing to hold that the Congress could not empower the Interstate Commerce Commission to make an order requiring plaintiffs to short-haul themselves.

XVIII

In refusing to hold that the said order of the Interstate Commerce Commission, as modified, is null and void because it was entered at a date subsequent to the date of the Commission's last report and without any notice to plaintiffs and without giving them an opportunity to be heard.

[fol. 95] XIX

In making and entering the decree dismissing the Bill of Complaint for want of equity.

XX

In denying plaintiffs' prayer for a permanent injunction.

XXI

In refusing to enjoin, set aside, suspend and annul the said order of the Interstate Commerce Commission, as modified.

XXII

In holding that whenever any rail carrier, subject to the Act, enters into an agreement with a water carrier, operating from a

port in the United States, the Interstate Commerce Commission may require such railway to enter into similar arrangements with any and all lines of ships operating from the same ports.

XXIII

In finding on this record that the Morgan Line is owned and controlled by the Southern Pacific Company.

XXIV

In holding that over the Morgan Line there was, at the time of the entering of the order complained of, an "arrangement" for jointly transporting freight from Oklahoma points to New England by rail and water.

XXV

In holding that over the Mallory Line there was, at the time of the entering of the order complained of, an "arrangement" for jointly transporting freight from Oklahoma points to New England by rail and water.

[fol. 96]

XXVI

In holding that the proceeding was quite within the jurisdiction of the Commission and its carefulness and exhaustive investigation, and, the completeness of the orders, preclude any thought of the arbitrary, or, of the unreasonable.

XXVII

In holding that the Commission related the rail and water rate to the all-rail rate in such a way as not to be illegal.

XXVIII

In refusing to hold that the said order, as modified, is arbitrary and baseless, and without competent evidence to support it.

Wherefore, the above-named plaintiffs, petitioners herein, and each of them, pray that the said order or decree of said Court denying them the relief prayed for and dismissing the Bill of Complaint be reversed and set aside with directions that the permanent injunction applied for be granted and for such other and further relief as may be appropriate.

Lassiter, Harrison and Pearson, Goree, Odell and Allen, M. G. Roberts, and A. B. Enoch.

[fol. 97] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed July 3, 1925

In the above-entitled cause the plaintiffs having made and filed their petition praying an appeal to the Supreme Court of the United States from the decree and order of this Court, of June 8, A. D. 1925, denying their application for the relief prayed for in their Bill of Complaint and dismissing said Bill of Complaint for want of equity, and having made and filed an assignment of errors and having conformed in all respects to the statutes and rules of Court in such case made and provided,

It is ordered and decreed that the appeal prayed for be and it is hereby allowed and made returnable on the 25th day of August, A. D. 1925, and the Clerk is instructed to transmit forthwith a properly authenticated transcript of the record, papers and proceedings to the Supreme Court of the United States.

Rufus E. Foster, Circuit Judge. W. L. Estes, District Judge. Wm. H. Atwell, District Judge.

[fols. 98 & 99] CITATION—In usual form, showing service on George B. McGinty; filed July 3, 1925; omitted in printing

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[fols. 100 & 101] CITATION—In usual form, showing service on Dan Moody; filed July 3, 1925; omitted in printing

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]fols. 102 & 103[CITATION—In usual form, showing service on J. M. Burwell; filed July 3, 1925; omitted in printing

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[fols. 104 & 105] CITATION—In usual form, showing service on Neverson W. Nolley; filed July 3, 1925; omitted in printing

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[fols. 106–108] CITATION—In usual form, showing service on Henry Zweifel; filed July 3, 1925; omitted in printing

[fol. 109] IN UNITED STATES DISTRICT COURT

Docket No. 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE, INCORPORATED, et al.

vs.

THE ARCADE & ATTICA RAILROAD CORPORATION et al.

Statement of Evidence Before the Interstate Commerce Commission

CAPTION

Testimony Before the Interstate Commerce Commission Introduced in This Court, Reduced to Narative Form in Accordance with the Rule.

(All the exhibits submitted to the Interstate Commerce — in this case and introduced in this court are attached to this statement.)

Before Fred N. Oliver, Examiner

Houston, Texas, April 20, 1922—3:35 o'clock p. m.

Met pursuant to adjournment.

Proceedings

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Exam. Oliver: Gentlemen, the Interstate Commerce Commission has set for hearing at this time and place Docket 13418, Houston Cotton Exchange and Board of Trade, Incorporated, et al., v. The Arcade & Attica Railroad Corporation, et al. It is alleged that the defendants have failed and refused to provide joint through commodity rates for the transportation of cotton and cotton products from various points in the State of Oklahoma to various points in the northeastern portion of the United States and in eastern Canada, when such shipments move via rail and water routes through the [fol. 110] Port of Galveston, Texas, and other Texas ports, and that by reason thereof, complainants and their members have been subjected to payments of rates, fares and charges which were unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act. The Commission is asked to prescribe just and reasonable through joint rates for the future.

Is that a correct statement of the issues?

Mr. Fulbright: That is true, Mr. Examiner, unless it be correct to say that in the requirement to put in joint through rates, where

joint rates do not exist, we should invoke Section 15, I believe it is, of the Act.

Examiner Oliver: Are you ready to proceed with the testimony?

Mr. Fulbright: Call Mr. F. R. Dalzell.

F. R. DALZELL was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

That he had been connected with the Santa Fe for about 15 years in various capacities in the Freight Traffic Department and during Federal control he was General Freight Agent of the G. C. & S. F., Texas Midland and Galveston Wharf Company. On June 1, 1920, he was Assistant General Freight Agent of the Santa Fe and on that date he left to go with the Houston Cotton Exchange and Board of Trade as Traffic Manager where he is now employed.

The Houston Cotton Exchange consists of about 65 members. Its purpose is to promote and facilitate the business of buying, selling and shipping cotton. (The witness asked the elimination of linters entirely from the case and that nothing said with respect to cotton rates is to be understood as applying also to linters.)

[fol. 111] Exhibit No. 1 shows the total production of cotton in the United States for the years 1917, '18, '19 and '20.

Exhibit No. 2 shows the consumption of all the States in the United States by crops.

Exhibit No. 3 deals with the production of cotton in Oklahoma by counties.

Exhibit No. 4 is a chart showing distances to Galveston from representative points in all counties in Oklahoma producing 15,000 bales or more, and the route by which the distance is figured. The short-line distance is the actual short-line route as shown in Fonda's Distance Table I. C. C. 88. The actual water distance from Galveston to New York is 2,160 miles. Our figure of 727 miles is based upon treating one rail mile as equal to three water miles. In Southwestern Shippers' Traffic Association v. A. T. & S. F., 34 I. C. C. 570, the Commission in rendering its decision chose to treat the distance from New York to Galveston as being equivalent to 350 rail miles while the carriers defendants held for a relationship of one to three.

Exhibit No. 5 shows the distances from the same points in Oklahoma enumerated in exhibit 4 to St. Louis and route by which the distances were figured. The second page shows the distance from St. Louis to the basing points used in exhibits that will be subsequently offered. These distances are taken from the Rand McNally Atlas. The witness offered Exhibits Nos. 6 and 7 and testified as follows:

Mr. Dalzell (continuing): All of the rates shown in Exhibit No. 6 are the rates of December 31, 1921. The difference between them and the rates actually in effect today is the 10 per cent reduction which was made effective January 1, 1922, and it is published to ex-

pire with the month of June. For that reason we have disregarded [fol. 112] the 10 per cent reduction entirely and have made all of our computations in the exhibits upon what I might term 100 per cent rates. We especially omitted the use of these 10 per cent reduction rates for the reason that they are published with the requirement that the traffic must be loaded 75 bales to the car, which virtually makes the carload rates and in many instances we can't use them anyhow."

The witness stated that the basis for the rates via the all-rail routes shown in Exhibit No. 6 is the local rate from Oklahoma to St. Louis plus the local rates from St. Louis to these destinations. The basis for the rates shown via the Gulf is the local rates from Oklahoma to Galveston plus the local rates from Galveston to these destinations. In actual practice of shipping from Oklahoma to Seaboard territory via Galveston there are additional charges over and above the rates which we show in our exhibits consisting of the cost of unloading at Galveston and some switching charges there. There is also shown on Exhibit No. 6 the rates proposed from Oklahoma to these points via the Gulf.

Great as the difference is between the all-rail rates and the rates which now apply via the Gulf as shown on Exhibit No. 6 there is an even greater difference in that via the all rail routes the rates to these basing points apply also to great numbers of other stations, for instance the rate from Elk City to Boston, all rail, is 172½ cents and that rate applies to Actondale, Quebec. Via the Gulf the rate from Elk City to Boston is 198 cents, but the rate to Actondale via the Gulf would be 22 cents over Boston. This example is fairly illustrative of the whole situation in the East.

The witness testified that the all-rail rates are any quantity rates and that via the Gulf routes while the rail portion to Galveston is also any quantity the rates shown are carload rates contingent on minimum loading of 20,000 pounds. Treating the water haul [fol. 113] as equivalent to 727 rail miles it will be seen that the distance via the Gulf is shorter in every instance than the all-rail haul.

The witness asks that rates be established via the Gulf on the basis of at least 4 cents under the all-rail route and stated that even this 4 cents will place the routes only on a parity because the all-rail routes are insured rates whereas the rates via the Gulf are ordinarily published as uninsured rates, making it necessary for the shipper to pay for his insurance protection.

The witness stated that he estimated the insurance cost to be equivalent to 4 cents per 100 pounds which is the amount under the all-rail rates he asks the rates via the Gulf to be made and which, after all, he states will leave the two routes on an exact parity. In substantiation of this cost the witness referred to Southwestern Lines Tariff No. 43-N, Leland's I. C. C. No. 1487, Item 78, which provides that cotton moving via the Mallory or Morgan Lines from Galveston to New York may be insured under their open policies at the rate of 15 cents per $100.00.

Prior to 1910 or 1911 the through all-rail rates from Oklahoma to Seaboard were duplicated by the Gulf routes with the proviso that

there would be a differential in favor of the Gulf routes of 3 cents per 100 pounds, but he said he had not been able to get very clear information about it.

The witness testified that under General Order No. 28 the through all-rail rates were increased only 15 cents per 100 pounds whereas via the Gulf the local to Galveston and the local from Galveston were increased 15 cents each and there were possibly three separate amounts of 15 cents each where the combination would be made up of three factors. This was due to the fact that there was a tariff published of through rates from Galveston to a large part of the eastern spinning district and in such case the advance in rates was effective only twice whereas to interior points to which through rates from Galvestion were not published the advance was applied three times namely on the local from Oklahoma to Galveston, on the second local Galveston to New York, and on the third local New York to final destination.

The witness stated the basis, all-rail, from Texas to this eastern Seaboard territory is the combination on St. Louis, New Orleans or Memphis. Via the Gulf route there are through rates from Texas to all eastern spinning points which was originally on the Galveston combination with the proviso that in no instance should that combination be more than 8 cents per 100 pounds under the all-rail [fol. 114] rates. We might with propriety have asked for a differential from Oklahoma to Seaboard points via the Gulf of 8 cents. We are going to content ourselves with a 4-cent differential which really equalizes the two routes but doesn't give us the rate we are properly entitled to because of the shorter distance and cheaper service via the Gulf. There are many instances where the differential in favor of the Gulf route on business from Texas is far in excess of 8 cents.

Referring to Exhibit No. 6, while it is true that there is not a rail and ocean and rail and lake and rail basis to every point in Eastern Seaboard territory, the rates shown as applying all-rail do also apply via rail and ocean through the Atlantic ports to a great many points in seaboard territory as is shown on page 34 of Southwestern Lines Tariff No. 80-E Leland's I. C. C. 1467. Those rail and ocean rates are insured rates and where they apply through the Atlantic ports the rail haul portion of the movement is in excess of the rail movement via the Gulf and in many instances in excess of the rail haul where the movement is all rail.

Exam. Oliver: We will adjourn until 9 o'clock in the morning.

Houston, Texas, April 21, 1922—9 o'clock a. m.

Met pursuant to adjournment.

Exam. Oliver: Let's proceed, gentlemen.

F. R. DALZELL was thereupon recalled as a witness and, having been previously sworn, testified as follows:

Direct examination:

The witness stated that on page 6 of Supplement No. 5 to S. L. T. No. 80-E, Leland's I. C. C. 1467, there are rates to Boston from Oklahoma points via rail and ocean 4 cents per 100 pounds less than the all-rail rates. The adjustment asked for amounts really to an actual equalization of the charges via the two routes. Southwestern Lines Tariff S. W. L. Tariff No. 50, Leland's I. C. C. 1418, [fol. 115] names a mass of rates on classes and commodities from Seaboard territory to Oklahoma via rail, ocean and rail which same rates apply also via the Gulf routes. There are no through rates published from Eastern seaboard territory to Oklahoma via all-rail and the combination of locals on the Mississippi river are very materially higher than these rail, ocean and rail and also Gulf route rates, named in the tariff just mentioned.

Exhibit No. 8 is primarily to show that the carriers have established rates via the Gulf which are lower than the all-rail rates between Seaboard points and Oklahoma points. It is not to be understood that Exhibit No. 8 shows the only commodities where that situation exists. It exists on all classes and all moving commodities from Seaboard territory to Oklahoma. The second page shows a number of comparisons of rates from Oklahoma to eastern Seaboard territory. The first item is Frisco tariff 381-D, I. C. C. 7511, which makes the rate on wall plaster, carloads, from Southard, Oklahoma, to New York, 42 cents via the Gulf and 48½ cents rail. The witness stated that the exhibit should be corrected to show Southard in Oklahoma and not in Texas.

The witness offered Exhibit No. 9 which is a comparison of the ton per mile earnings out of the present all-rail rates, present rates via the Gulf and the rates via Gulf which are proposed. It is noted that the revenue tons per mile under the rates which are asked for will be considerably greater in every instance than the present revenue per ton mile which the carrier earned out of the existing all-rail rates. The average distances and rates in this exhibit are taken from Exhibit 6.

Cross-examination:

The membership of the Houston Cotton Exchange is composed of corporations, firms and individuals. Among the members are factors, owners of presses, spot brokers, exporters and everything else that handles cotton. Many of the factors that buy cotton outright have representatives in the field and many of them have not. When cotton moves under through rates from Texas into the con-

[fol. 116] centration points, such as Houston or Galveston, the local rate is paid on that movement. The cotton may remain at the concentration point 12 months. When it moves out to the eastern destinations the local rate is paid on that movement from the concentration point to destination. It may be prepaid or it may be collected at destination, and then we have the opportunity which the tariff provides for filing a concentration claim.

(Objection because the witness has not testified about concentration or anything of that character in his direct testimony and because question of concentration is not involved in the complaint and is not in issue.

Exam. Oliver: The objection will be overruled on that one question.)

The witness stated that when he previously mentioned through rail-water-and-rail rates from Oklahoma points on cotton via Galveston to eastern destinations he thought it was a general application, but that there may of course have been some exceptions on some railroads. The record in the Southwestern Tariff Committee is that the basis was to be 2 cents under. When the 2-cent differential was in effect the rates were all published by the different railroads individually and it is utterly impossible for a shipper in the year 1922 to get the real facts about the situation.

After the cancellation of the 2-cent differential basis the combination of locals on Galveston made perhaps less than the all-rail rates. Somewhere between 1910 and the present time the rates from Texas Gulf ports were increased, although at the present time the Gulf route is being charged excessively high rates as compared with the rates that apply on the all-rail route movement.

In Southwestern Lines Tariff No. 43H, Leland's I. C. C. 1487, on page 155, it is shown that the rates via Gulf will be not more than the differential of 8 cents under all-rail rates via the following lines: [fol. 117] C. C. & S. F., G. H. & S. A., H. E. & W. T., H. & T. C., I. & G. N., M. K. & T. of Texas, P. & S. F., S. & A. P., T. & B. V., T. & N. O., and T. & P.

The witness stated that he had some recollection of having heard that the Southern Pacific, or perhaps the Southern Pacific Water Lines, had something to do with the establishment of the differential rate on the Gulf route under the all-rail route, but that he had no positive information on the matter.

The witness stated that it was difficult to say where the center of cotton production in Oklahoma was. It seems to extend completely across the State of Oklahoma in the southern half of the state. The average production of cotton on the Santa Fe in Texas is considerably less than 300 miles from Galveston. A 4-cent differential was determined by the thought that it would suit most of the parties concerned to split our difference at 4 cents under all-rail instead of 8 cents under all-rail as is the differential in the case of rates from Texas. The 4 cents was determined by deducting the cost of in- [fol. 118] surance, which the tariff shows is 15 cents per $100 valu-

ation. That figure, 4 cents, we thought would just about make an equalization in the actual cost to the shipper for the movement via Gulf with the rate via all rail. That is about the only reason the figure 4 cents was fixed. Some figures were made and it was found that if the differential was made higher than 4 cents there would be fourth section violations from Oklahoma through Texas but that was not one of our reasons. The rates asked for from Oklahoma via the Gulf to New England are not the same as prevail from the common point territory of Texas today. Whenever they are the same it just happens to be so. The 4 cent differential does not eliminate fourth section departures. The basis asked for involves some fourth section departures. The principal lines in Oklahoma originating cotton are the Santa Fe, the M. K. & T., the Frisco and the Rock Island. The Santa Fe and the M. K. & T. have their own rails to the Mississippi river or beyond, as well as to Texas Gulf ports. The Rock Island and the Frisco have their own rails to the Mississippi river at Chicago and not to the Gulf ports. The Rock Island has its interests in the T. & P. Ry., which runs to Houston. The Frisco doesn't have any line directly to Houston, which is a Gulf port.

The witness stated that cotton from Oklahoma points to Southeast territory moving via the Gulf must be transferred from cars to ships at the Gulf ports and from the ship to cars at the North Atlantic ports.

The witness testified that there are more cars coming into Galveston loaded than go out of Galveston loaded but that that situation is also true of other commodities. Practically all cars made empty at Galveston during the cotton shipping season are taken out of Galveston empty, but that does not necessarily mean an empty haul back because many cars are sent over into the Houston district and loaded with lumber.

The witness testified that there are more cars coming to Galveston loaded than there are loads for them in Galveston. The movement of cotton from Oklahoma to Atlantic Seaboard points is not the same seasonal movement of cotton you have in mind. It will be a 12-months movement. The Houston Cotton Exchange has an interest [fol. 119] in getting an adjustment of rates via the Gulf routes which will put it at least on a parity with the all-rail routes. They would have this interest if they were not privileged to unload cotton and concentrate it at Houston or Galveston or some other points in Texas, the interest without the concentration privilege being to have a route via Galveston that is the shortest in point of miles, and the cheapest route for the carriers from point of service. It is desired that all available routes have reasonable and proper rates.

The witness testified that he was not asking for these proposed rates from Oklahoma to Seaboard territory as being reasonable rates. They are asked for merely as an equalization with the all-rail rates. It is not claimed that they would be rates reasonable in and of themselves. It is not admitted that the rates from Oklahoma to Seaboard territory, all rail, are reasonable rates. It is not admitted that the present rates from Oklahoma to Seaboard territory are

reasonable in and of themselves, nor is it admitted that the present rates from Oklahoma points via the Gulf to Eastern Seaboard territory are reasonable in and of themselves. Any effort to raise the all rail rates would be quickly protested by the shippers.

The witness stated that it would not be satisfactory for the Commission to find what a reasonable rate is, regardless of the route, from Oklahoma to Seaboard territory, and then allow the railroads to apply that rate or limit its application to the all-rail route through Chicago, St. Louis or Illinois junction points. It would not be satisfactory not to apply it via the Gulf route because one of the reasons for asking for this adjudgment is that rates are wanted via all the available routes and the Gulf routes ought to have rates because they are the shortest and most convenient. Our interest is as well in the through movement as in the cotton that we concentrate. We do not want to be shut out from the use of what we regard as the most efficient and from every point of view the most desirable route.

[fol. 129] The witness testified that he was not attempting to go into the actual cost of transferring freight from railroad to boat at Galveston or from boat to railroad at New York, but that he thought the carriers would have as much net money on cotton moving from Oklahoma to Boston, for instance, via the Gulf, with the necessity of transferring the freight twice en route, as they would have if the traffic was transported all-rail, because from Texas to this same Eastern territory the rates via the Gulf which include the unloading at Galveston and loading at New York are made on the basis of 8 cents under the all-rail rates. That seems to indicate that on traffic from Oklahoma to Seaboard territory on the basis of only 4 cents under the all-rail rates the carriers ought to have as much net money left.

The witness stated he had no knowledge or information about the Interstate Commerce Commission having passed upon the 8-cent differential less than the all-rail rate from Texas.

The witness said that as he previously testified he had heard that the Southern Pacific Lines Railroads or their Steamship Lines had initiated the 8 cents per 100 pounds differential from Texas on the rates via the Gulf under the all-rail rates from Texas on cotton.

Redirect examination:

The witness testified the first concentration privilege is free. Thereafter the charge for the second concentration will be 7 cents per 100 pounds.

If the Santa Fe transports a car of cotton from Ardmore, Oklahoma, to Boston the short line would be 1,832 miles and it would be without its equipment a longer time than it would if the car were hauled to Galveston even though there is an empty return movement all the way.

(Witness excused.)

[fol. 121] W. P. Lewis was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

The witness stated he was testifying in behalf of the Clyde and Mallory Steamship Companies. They are defendants only to the extent that rates cannot be put in unless you can get somebody to join you in putting them in.

Rates via the Gulf from Texas to Atlantic Seaboard territory in maximum is observed of 8 cents under the all-rail rates. They are uninsured. Normally rates all-rail from Oklahoma to Atlantic Seaboard territory are 4 cents per 100 pounds lower than the all-rail rates from Texas to the same points. It is our view that uninsured rates via the Gulf routes from Oklahoma to the points in Atlantic Seaboard territory to which joint rates are in effect from Texas should be published via the Gulf routes, the same differential of 8 cents per 100 pounds under all-rail rates from Oklahoma as is employed in constructing maximum rates via the Gulf in relation to all-rail rates from Texas, observing as minimum rates via the Gulf from Texas common points. This would mean a differential Gulf under all-rail from Oklahoma of 4 cents per 100 pounds less cost of insurance except when combinations from Texas common points via the Gulf yield lower than the 8-cent differential under all-rail from Texas common points. When the combination from Texas common points is 13 cents or more under rail, the differential Gulf under all-rail from Oklahoma would then be the full 8 cents per 100 pounds. Rates via the Gulf routes which operate by steamer from Texas ports to New York cannot be made from Oklahoma to a large and important part of the Atlantic Seaboard territory on any uniform relation to all-rail rates from Oklahoma unless Fourth Section relief is granted by the I. C. C. That has reference to the territory lying west of New York City.

[fol. 122] Broadly speaking, between practically all territories within the United States where rail-and-water service is available, the largest exception being the transcontinental traffic, and the more or less restricted territory in the Mississippi Valley section, there are differential rates in effect on not only cotton but on practically all commodities that move.

It has been conceded in arbitration cases between British traffic lines that water-and-rail routes should be accorded differential rates under all-rail for the reason that the risk is greater under water transportation because of statutes exempting water carriers from certain measures of liability and because of the breakage of bulk in transit, which creates opportunities for loss, damage or pilfering.

The Gulf route lines, the Mallory Steamship Company and the Southern Pacific Company Atlantic Steamship Lines, commonly known as the Morgan Line together with the coastwise steamship lines on the Atlantic coast, has conducted negotiations with not only the New England rail lines but likewise the New England rail and water, the New England water and the eastern rail trunk lines

for the purpose first of obtaining from them a basis for the division of rates on cotton and other commodities, although we will only deal with cotton in this case that would be as we thought reasonably fair to them as well as to the coastwise lines and their southern rail connections and we have succeeded in obtaining from them bases of division for arbitraries, if they may be called such, which carries with it their acquiescence in the participation and handling of this cotton traffic through the Gulf to the entire eastern seaboard territory with the exception of a few points in Canada to which cotton moves and we anticipate at an early date that situation will also be straightened out. I may say that in connection with my statement, their acquiescence and their participation in the movement of this traffic through the Gulf, they are today participating [fol. 123] carriers under proper concurrence in the rates on cotton via all of the Gulf ports served by regular coastwise steamship lines operating to and from the eastern seaboard ports, from all territories of origin, Oklahoma, Texas, Louisiana, Mississippi, Florida, through the Gulf and from all the cotton producing states on the Atlantic seaboard through the Atlantic ports in connection with coastwise steamship lines operating from the southern and all Virginia ports and in which service between the south Atlantic ports and New York and Boston, the Clyde Steamship Company, one of the defendants in this case operates regular services and are parties in conjunction with said eastern lines to the various cotton rates from the cotton producing sections east of the Mississippi river.

It has been generally recognized, and the Interstate Commerce Commission in the Sloss-Sheffield case recognized, in so far as divisions were concerned, the constructive prorating mileage of three water miles to one land mile.

Cross-examination:

The cost of transporting cotton at New York from our ships to the rails of the eastern lines varies according to the quantity put on each lighter. Practically all of the rates to New York include the 4 cents per 100 pounds lighterage, but the 4 cents does not include the cost of taking the cotton out of the ship and putting it on the lighter.

No man on earth can tell what it costs to load and discharge cargoes as they come and go. No one commodity can be singled out. The cost of handling our traffic in and out and interchanging it with our connections at New York is high but not nearly so high by 80 or 90 per cent as it was four months ago.

We discharge cotton to the lighters from the steamer. They take it to our piers and discharge it into the cars themselves.

The witness stated he could not figure down to a final analysis how much it cost his company to handle cotton from the cars into the ships at Galveston. There is a substantial charge which some- [fol. 124] body must pay to cover the transfer of cotton at Galveston from the cars to the ships and at New York from the ships back to the cars. It is also true that somebody has to pay on all traffic that moves from New Jersey to New York by rail across the Hudson.

In making rates on cotton from Galveston to the various points in Atlantic Seaboard territory the witness stated he took the full local rate of the boat line from Galveston to New York and added to that the figures that were supplied by the eastern lines as their rates beyond New York. One of the purposes of the proposed joint rates is to enable us to participate or to compete for the movement of cotton. We also have an interest in our patrons. It is quite an advantage to shippers as well as consignees to have rail-and-water rates via the Gulf, and New York, especially to such points as New Bedford, Lowell, Fall River, Providence, Hartford and other points reached by boat lines from New York in an all water haul.

The Mallory and Morgan lines have established a rate from Galveston to New York of 25 cents per 100 pounds on cotton for export. We consider it pays something over and above the cost of handling.

The 50-cent rate from Galveston to New York is not a high rate. You can't do all your business on a minimum basis. The Clyde and Mallory Steamship Companies have been willing to participate in joint through rates. Our advice has been that our rail connections did not want to establish any rates less than the all-rail rates and some of them are not particular about doing that. They prefer to handle business through the Mississippi river gateways. The carriers in the East have interposed no objection. They are perfectly willing to handle the business in conjunction with us. The trouble is with the Oklahoma lines.

[fol. 125] WILLIAM SIMMONS was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

The witness stated that he was General Freight Agent of the Southern Pacific Company-Atlantic Steamship Lines, generally known as the Morgan Lines.

Rates via the Gulf from Texas to Atlantic Seaboard territory are observed as maximum 8 cents under the all-rail rates. These rates are uninsured. The reference to the rates via the Gulf means the rates via Galveston and the Morgan Lines. The normal rates all-rail from Oklahoma to Seaboard territory are 4 cents lower than the all-rail rates from Texas to the same points. Uninsured rates via the Gulf from Oklahoma to points in Seaboard territory to which joint rates apply from Texas should be published the same differential of 8 cents per 100 pounds under all-rail rates from Oklahoma, observing as minimum rates via the Gulf from Texas common points in order to observe the fourth section requirements at the origin. This would make a differential via the Gulf routes under all rail from Oklahoma of 4 cents per 100 pounds less cost of insurance except when the combination from Texas common points

via the Gulf yields lower than the 8-cent differential under all rail from Texas common points.

The Gulf routes should be permitted to maintain the same conditions that are now present in the adjustment via all rail, thus enabling the Gulf route to participate in the marketing of Oklahoma cotton to all Atlantic Seaboard territory.

The discrepancy between carload and less-than-carload rates is due to the fact that the conditions as to transfer at New York to connecting lines are not the same on carloads as on less-than-carloads. The carload rates are the same from our pier as they are from connecting lines stations. This is not true of the western carload traffic and on that traffic there is a transfer charge, the service being per- [fol. 126] formed either by dray, or by lighter and the expense being different in some cases.

The witness stated that as he understood, the cotton that goes to Atlantic Seaboard from Texas and from Oklahoma is usually moved in 50-bale lots which exceed the minimum of 20,000 pounds specified in connection with the carload rates through to the interior destinations in Atlantic Seaboard territory.

The lines beyond New York have not made any appearance in this case. It is our understanding that they have not done so because their arrangement with us permits through rates to be published on cotton from any territory via our line, we having agreed to allow beyond New York a fixed proportion on all cotton whether it originates at our ports or at southern ports or at points beyond those southern ports. These proportions or divisions are usually substantially less than the locals. Through rates via the Gulf routes from Atlantic Seaboard territory to Oklahoma are substantially lower than the rates from and to the same points all rail and they are lower than the rates to Texas. These westbound rates, lower than the all rail rates, include re-insurance, whereas the proposition submitted here on cotton contemplates the publication of uninsured rates. The departure from the fourth section in connection with certain rates to intermediate points is authorized or protected by application on file with the Commission.

The justification for the Fourth Section departures on classes and commodities, Atlantic Seaboard territory to Oklahoma, is that the routes and the same rates apply via the shorter lines operating via Atlantic ports and upper Mississippi river crossings. The situation is exactly identical with the situation presented by the proposed adjustment on cotton from Oklahoma to Seaboard territory.

The route from Oklahoma via the Gulf to Baltimore is through New York and Philadelphia. The all-rail rate to Baltimore is 3 cents less than the all-rail rate to New York. To Syracuse, Albany, Utica and Rochester the all-rail rate is 7 cents less than the all-rail rate to New York through which point the traffic via the Gulf must pass.

The insurance cost on the present value of cotton is about 3 cents [fol. 127] per 100 pounds. There are considerable disadvantages in the matter of transfer, etc., in connection with the movement via the Gulf which are not present in the movement all rail. It

is necessary to have the differential in order to enable a reasonable portion of this traffic to move via the Gulf.

The current Transcontinental tariffs both east and west carry rates via rail and water with the Morgan Line to and from New York which are lower than the all-rail rates.

The ratio of three water miles to one land mile has been employed largely in the construction of divisions and made upon a mileage basis.

On September 1, 1920, the rate on compressed cotton, with no allowance for compression, from Galveston to New York was 66½ cents per 100 pounds. That rate today is 30 cents. To show the service performed on routes via the Gulf the rate of 66½ cents for the mileage of the Gulf lines may be compared with the rate of 115 for the mileage from Oklahoma to Galveston.

Cross-examination:

These miscellaneous commodity rates from Seaboard territory to Oklahoma points were made about 15 or 20 years ago on the Memphis-Ardmore rate with a 50-cent scale added to make the rate from blanket Seaboard territory to blanket Oklahoma.

117. Under the proposed joint rail water and rail rates there would be no fourth section difficulties going east from New York to New England points.

There have been instances in the past few years when certain routes were congested and it became necessary to send freight by any open route. The more routes there are between any two points the more chance there is of one or more being open.

J. L. West was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

The witness stated that he was Manager of the Transportation Bureau of the Dallas Cotton Exchange and had been connected with the railroads up to three years ago.

[fol. 128] There are about 70 members of the Dallas Cotton Exchange. They handle somewhere between a million and a quarter and a million and a half bales of cotton per annum. They deal in cotton grown in Texas and Oklahoma principally, but they also deal in cotton from Arkansas, Louisiana, Mississippi and Alabama. The heaviest shipping members of the Dallas Cotton Exchange are also members of the Oklahoma State Cotton Exchange.

The important reason given by the members of the Dallas Cotton Exchange for rates via the Gulf is the fact that they are really compelled to ship all of their Texas cotton to New England, via the Gulf and it better suits the business of the shippers in many cases to be able to forward their Oklahoma purchasers which they

want to send to New England via the same routes. They can often ship from Oklahoma to Texas and get the cotton on the same boat at Galveston, which is of considerable convenience to them in their dealings. They desire to concentrate their business.

The witness stated that he generally confirmed Mr. Dalzell's testimony and the exhibits submitted by him.

4 cents per 100 pounds is closely the insurance cost over the rail and water route.

W. P. LEVIS was thereupon recalled as a witness and, having been duly sworn, testified as follows:

Direct examination:

Nearly all the cotton is insured from the time it is bought until it reaches its destination, whether it moves all rail or rail, water and rail. The normal rate on cotton moving over the all-rail routes is 7½ cents per $100 valuation and over the rail, water and rail routes via the Gulf 24 cents per $100 valuation. There is against the rail and water routes then a difference of 16½ cents per bale for $100 valuation, approximately 4 cents per 100 pounds. The same rates all rail and via the Gulf would not be an equalization of rates from Oklahoma points.

Joint rates, rail and water, would help the manufacturers in New England territory because it would give them other channels for [fol. 129] the movement of the traffic. During times of congestion it is a great deal easier to get the cotton through by the water lines from New York to New England spinning centers than it is by the water lines to New York and thence rail or the all-rail routes.

Cotton is usually sold on the basis of delivery during the first half or the second half of the month and for delivery by or before notice day. The shippers know that if they put that cotton on a Mallory Line ship or Morgan ship it will be in New York in seven days on the outside unless the ship goes down or stress of weather delays it. Very few rail lines could give like assurance.

The witness stated that it was his opinion that these water routes are a benefit to the purchaser, consumer and the dealer.

W. F. SPARKS was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

The witness testified that he was the Sales Manager of the Oklahoma Cotton Growers Association, which is a cooperative marketing association of farmers organized for the marketing of cotton grown on the farms of its members. Last year there was a membership of 35,000. The witness stated that he was familiar in a general way with the method of marketing cotton in Oklahoma and in this

territory and that joint rates on cotton from Oklahoma to Atlantic Seaboard territory 4 cents under the all-rail rates are very much to be desired.

The Oklahoma Cotton Growers Association handled this year some 91,000 bales of cotton even with the short crop at Oklahoma. That Association wants and needs as wide a market for cotton as possible. There are any number of firms that would like to handle Oklahoma cotton in this market or the Galveston market, but our business with [fol. 130] them has been limited.

The proposed arrangements would be to the advantage of the producer in that he would have the benefit of the market here that he does not now have. The Oklahoma Cotton Growers Association is not interested in the concentration of cotton; it has no warehouses and is interested only in the marketing of cotton.

The compresses in Oklahoma have warehouse facilities inadequate for the handling or storage of cotton. The Oklahoma Cotton Growers Association had some 20,000 bales piled up in the country yards and it was necessary to ship that cotton either to Houston or Galveston for storage. Storage could not be obtained by shipping it all rail to the east because there were no arrangements with the warehouses up there.

For the next several years to come the mills in the east will buy on what is termed the hand-to-mouth policy which necessitates the marketing of cotton over a period of probably eight to ten months instead of three to six months as has been the case heretofore.

The program of the Oklahoma Cotton Growers Association this year was to market cotton gradually over a period extended from the time it began to move, around the first of September, until the first of June or July.

With reduced rates through Galveston and Houston there will be a better opportunity to divert that cotton if necessary to the European market for export and the Oklahoma Cotton Growers Association expect to enter the export field this year.

E. H. Thornton was thereupon called as a witness and, having been duly sworn, testified as follows:

[fol. 131] Direct examination:

The witness stated that he was Traffic Manager of the Galveston Cotton Exchange and Board of Trade and that prior to his connection with the Cotton Exchange he was employed by the Southern Pacific in the Rate and Freight Traffic Department from 1901 to 1919.

The Galveston Cotton Exchange is an organization consisting of some forty or fifty members, interested in the buying, selling and handling of cotton. Some of the members are very large buyers of cotton in Oklahoma who want to ship cotton to Seaboard territory via Galveston.

The question of rates on cotton from points in Oklahoma to Seaboard territory was placed before the Dallas District Freight Traffic Committee when Mr. West was chairman.

The witness stated that he wanted to concur in what Mr. Dalzell and Mr. West have already testified to.

There are members of the Galveston Exchange who are also members of the Oklahoma Cotton Exchange and are very large shippers of cotton from Oklahoma to various destinations, and they are anxious to obtain the adjustment of rates sought in this proceeding.

A number of the members of the Galveston Exchange have stated to the witness that they have been forced to discontinue buying in the Oklahoma markets because of the freight rate situation through Galveston and they desire to ship the cotton via that route.

The lower rates now published on cotton from points in Oklahoma to Boston via the Atlantic ports routes are insured rates. * * *

Mr. Fulbright: That completes our case.

[fol. 132] GEORGE E. SCHNITZER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

The witness stated that he was Assistant General Freight Agent of the Chicago, Rock Island & Pacific Railway Company with headquarters at Little Rock, Ark.; that he had had twenty-two years' experience in the supervision of freight rates, including cotton rates involved in this complaint, and that all of his railroad experience has been concerned with rates and traffic matters in general.

The Oklahoma steam railroad mileage is approximately 6,670 miles. Of that the Santa Fe represents 1,304 miles or 19 percent, the M. K. & T. 701, or 10 percent, the Frisco 1,507 miles, or 22 percent, and the Rock Island 1,334 miles, or 20 percent. The four steam lines mentioned handle more than 71 percent of the cotton produced in the state. The average Oklahoma crop runs around a million bales. The average loading of flat cotton produced at the gin points is 25 bales per car. It required 52,104 cars to handle the Oklahoma cotton crop of approximately 450,000 bales. The average loading of compressed cotton is around 75 bales per car. The 1920 season required 17,368 cars. The present season of 455,000 bales has required in round figures 16,000 cars to handle the flat cotton from the gin into the compress points and in round figures 6,100 cars to handle the outbound movement. Flat cotton is the uncompressed cotton.

The north and south main line of the Rock Island runs through Enid, El Reno and Chickasha, Okla., down to the Texas line. The Rock Island east and west main line runs from the Texas border through El Reno, Oklahoma City, Shawnee and McAlester, Okla., to the Arkansas line.

[fol. 133] Exhibit No. 3 shows that for the 1920 season in Oklahoma 224,866 bales, or 17 per cent of the production, was in the

southwestern group, 11,751 bales or less than one per cent in the northwestern group, 504,805 bales or 37 per cent of the total was in the southwestern group, and 596,649 bales or 45 per cent was in the northeastern section. The southwestern group referred to is the southwestern part of the state which lies south of the east and west line and west of the north and south line. The northwest group is that part of the state lying west of the north and south line and north of the east and west line. The southwestern group is that part of the state lying south of the east and west line and east of the north and south line. And the northeastern group is that part of the state lying north of the east and west line and east of the north and south line. The Rock Island has 11 compresses on its line in Oklahoma, one each at Guthrie, Oklahoma City, Chickasha, Lawton, Warrika, Hobart, Mangum, Shawnee, Holdenville, McAlester and Ardmore.

Cotton is brought from the field into the gin point where the seed and fibre is separated. The flat or uncompressed cotton is delivered to the carrier in practically all cases at the ginning points in uncompressed form. It is delivered to the carrier in all sorts of shipments, maybe one bale, maybe 10 or 15 or 20. The carriers must accept it at all times and under all conditions. It must provide facilities in the way of cotton platforms for protection on account of the fire hazard. At many points watchmen are employed. There is an extreme hazard with the handling of cotton and that is particularly true of the flat cotton. It is rather loosely put together and is especially susceptible to fire hazard. Because of the hazard the carrier must provide special service. It is not infrequent that a special train is required. This cotton is picked up along the line and [fol. 134] moved into compress points. More than 90 per cent of the Oklahoma cotton crop moves from the country producing stations into the compress points.

Assembling of cotton is extremely expensive. It is estimated in a general way that almost 50 per cent of the expense of handling is in the short move from the country point into the compress. The carrier in addition to the facilities at country stations must provide facilities at the compress points in the way of tracks and supervision of unloading cotton onto the compress platform. At some points the carrier unloads the cotton into its warehouse because it is loaded in a car with merchandise freight. In those instances that cotton must be drayed from the freight house platform to the compress. This is not an infrequent practice.

For every car of compressed cotton out of the compress it has required three cars to bring it in. The carrier does not permit any cotton to be compressed or concentrated beyond the first compress point, except that it is provided that in the event of a breakdown or some other emergency the cotton may be handled at another compress beyond. That is covered by tariff provision.

The initial assembling expense is a very important part of the initial carrier's expense of handling, for which it does not receive any compensation because under the concentration tariff it is provided that the carrier will undertake the expense of assembling

service into the compress points, permit the cotton to move to interstate destinations and protect without added cost to the shipper or consignee the through rate from the initial point of origin to final destination. With the exception of the points in the southwestern portion of the state and of a few points on the Rock Island line in eastern Oklahoma near the Arkansas border there is a blanket rate [fol. 135] to Boston. It is the same rate from all points of origin. The $1.15 rate, for instance, to St. Louis applies from the compress point as well as the country point. The charge that the carrier had collected in the first instance from the cotton dealer covering the transportation from the country station into the compress point is refunded when the compress cotton is shipped out, the carrier's revenue being based on the rates from the compress which is the same as the rate from the country station. There is no compensation to the carrier for this assembling expense. That is the principal reason that the Rock Island does not permit cotton to move except through its routes where it may receive a maximum haul.

Approximately 50 per cent of the Oklahoma cotton crop handled by the Rock Island moves to foreign countries. That traffic generally moves through the Gulf gateways. So that today the Rock Island must content itself with a short haul and minimum earnings on the cotton which moves for export through the Gulf ports.

The rail and water rates as well as the all rail rates on cotton from Oklahoma to which the Rock Island is a party apply only through the Memphis, St. Louis and Chicago gateways.

There is a very small volume of Rock Island Oklahoma cotton going to the eastern seaboard territory that moves under the rail and water rates. There are two or three reasons for this. In the first place, the rates are the same over the all rail routes as well as the rail and water routes, and in the second place, the eastern delivering lines have for the past four or five years required that cotton must come to them in lots of 75 bales or more per car. That compress cotton moves in all rail intact without any delay or without breaking bulk. Under the classification rating cotton is rated first class. There are both any quantity and carload rates. Under the any [fol. 136] quantity rates, except where there are special restrictions, the cotton may move in lots of one bale or lots of fifty bales. From a somewhat general review of our cotton rates in the territory generally about a year ago, it was found that the commodity rates published on cotton ran substantially lower than the fourth-class rates, that they are in the neighborhood of the Class B rates, the third carload class. Rates on cotton from Oklahoma to Eastern Seaboard territory applicable all rail, or rail and water through Atlantic ports, were originally established on the lowest combination. Generally that combination was over the St. Louis gateway.

The Rock Island, as a review back to 1907 shows, has not at any time carried joint through rates from Oklahoma to this Eastern Seaboard territory for application through the Texas Gulf ports.

For the calendar year 1921 the Rock Island handled 485,641 bales of cotton for an average haul of 468 miles. The per ton per mile revenue was 27.3 mills. For the year 1920 the Rock Island handled 503,003 bales of cotton for an average haul of 428 miles.

The revenue per ton per mile was 22.5 mills. For the calendar year 1919 the Rock Island handled 331,086 bales for an average haul of 419 miles. The revenue per ton per mile was 17.8 mills.

For the fiscal year ending July 1, 1915 the Rock Island handled 525,623 bales for an average haul of 463 miles. The revenue per ton per mile was 15.2 mills. For the year 1915 the Rock Island handled 493,287 bales for an average haul of 400 miles. The revenue per ton per mile was 19 mills. The Rock Island revenue thus shown is based on the performance from the compress points. It is impossible to go back of the compress point because the identity of the cotton is not preserved. If it were possible to take in that service of assembling the cotton it would reduce the revenue per ton per mile.

The witness offered Exhibit No. 10.

The purpose of page 1 is to show the maximum hauls the Rock Island can get on traffic moving to or through the Texas ports [fol. 137] in comparison with its mileage to St. Louis, to Chicago, and to Memphis. Generally speaking, the haul of the Rock Island on traffic through the Texas ports will average between one-half and one-third of the haul it receives when the traffic moves through the northern gateways.

The local rates applying to Galveston today do not produce compensatory revenue to the carriers, having regard for the service performed on this cotton traffic moving to Galveston. The Chicago, Rock Island and Gulf Railroad operates only in the State of Texas. It owns and operates within the State of Texas about 526 miles. The line from Ringgold, Texas, and the Red River extends south to Ft. Worth and Dallas—a distance 91 miles to Ft. Worth and 197 miles to Dallas. It also has a railroad in the Texas Panhandle.

The Chicago, Rock Island and Pacific Railway Company operates its railroad in thirteen other states. One main line begins at Memphis and extends westerly through Little Rock, Ark., McAlester, Okla., Oklahoma City, Okla., Amarillo, Texas, to Santa Rosa, New Mexico. Oklahoma City is 486 miles from Memphis.

The main line reaching St. Louis from Oklahoma City is through Enid, Okla., to Wichita, Kan., Topeka, Kan., Kansas City, Mo., and thence eastward to St. Louis. The Chicago route from Oklahoma City is through Enid, Wichita, Topeka and St. Joseph, and Eldon, Muscatine and Davenport, Ia., thence east to Chicago. Roughly the haul from Oklahoma City to St. Louis is 750 miles and to Chicago just over 900 miles. The routes of the Rock Island to this eastern destination territory through Memphis, St. Louis and Chicago are reasonable routes and at some of the destinations either of the three is the actual short route. I consider them all very reasonable direct routes.

"Q. Do you at the present time on cotton moving via the Gulf ports issue a through bill of lading?

"A. To the destination territory involved in this suit?

[fol. 138] "Q. Yes.

"A. Yes, sir."

The tariff provides that cotton moving from the country points into the compress points shall pay certain rates. The compressed cotton moves out to destination under a local rate from the compress points. The transit tariff provides that the through rate from the actual point of shipment to final destination may be protected through a "concentration claim." A claimant surrenders the inbound paid freight bill covering movement from the country point into the compress and a copy of the outbound bill of lading. The carrier refunds the difference between the amount that has been collected and the through rate.

There are numerous lines and routes available east of Memphis, east of St. Louis or east of Chicago. The Rock Island does not have any restrictions on the application of its rates with all of the available routes beyond those gateways. There are fifteen or twenty routes east out of St. Louis to Eastern Seaboard, and the same or a greater number of routes east of Chicago. There are four or five routes to this same territory east out of Memphis. All of these routes may be said to be reasonable and as they all radiate from these three gateways to this eastern seaboard territory they are very much more direct from Oklahoma to the Eastern Seaboard than the routes via Galveston. The Galveston route is a sort of back-door route.

The Galveston route would be less efficient than the all-rail routes from Oklahoma. It would be a more expensive route from the carrier's standpoint to handle the traffic via the Gulf routes than over the all-rail route and certainly there would be a tremendous difference to the rail carriers in revenue.

The witness stated that the Rock Island cotton rates are handled in his office and that he handles most of them personally and matters pertaining thereto. With respect to whether during the past [fol. 139] several years the Rock Island had been urged to establish the same rates via the water routes that prevail all rail, the witness stated that no such request had been received from any individual cotton industry. There had been some correspondence with an Association but in the absence of any recent urgency for the establishment of a water route it was concluded the explanation as to why the route was not made available had been satisfactory.

The establishment of the same rates via the water route would be what is commonly called wasteful service. There are today numerous routes available from Oklahoma to this territory and there is no difficulty as to the insufficiency or inadequacy of the present routes.

Cross-examination:

The witness stated that the Rock Island does issue through bills of lading to the Seaboard mills. In going from central Oklahoma to St. Louis the Rock Island is longer than either the Frisco or the M., K. & T. lines. The preponderance of the Rock Island cotton traffic to eastern seaboard territory moves through the Chicago gateway.

The Chicago, Rock Island and Gulf is a subsidiary company of The Chicago, Rock Island and Pacific.

Prior to the recent advance and general order 28 the Rock Island provided them as today that the through rate from Oklahoma to southeast territory would make on the lowest combination and apply over the different routes. When the rate broke on St. Louis, East St. Louis or Memphis it did not make any difference whether those points had concentration privilege or not.

The central southern part of Oklahoma is a very heavy producing section. There are some heavy producing counties in the southwest section of the State. The expense of stopping for compression or [fol. 139] excluding for compression occurs with respect to all cotton which originates on the Rock Island and moves all rail to Eastern territory under carriers' cost of compression rates. The carrier gets the benefit of the saving of equipment. It is an advantage to the carrier to compress the cotton.

It means actually loading to place 50 bales of flat cotton in a 10-ft. car. It can be done only by a man who knows how to do it.

The movement of cotton from the country points into the compress is extending over a greater period of time in recent years than it did formerly. The figures given with respect to the average haul of cotton were taken from the annual report filed by the Rock Island with the Interstate Commerce Commission. That report does not include the assembling service. The average haul of the Rock Island on cotton into the compress points is between 60 and 75 miles.

Those who are best qualified to express an opinion on the expense of handling cotton in the assembling service estimate that possibly half of the cost of the total handling to the mill of the Rock Island rails was in the assembling service. That estimate was made at different times once by one General Superintendent, another time by a Division Superintendent. There are no actual mill-run of cost figures.

The normal production in Oklahoma is over a million bales a year.

Cotton is produced in the Texas Panhandle and moves on the Amarillo rate. That country is not a substantial producing territory.

Redirect examination:

If there were any movement the Rock Island could not refuse to issue a through bill of lading to Galveston. The witness stated that he did not know of any through cotton from Oklahoma for the Rock Island moving via Galveston.

[fol. 140] J. W. Stephens was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

The witness stated that he was Assistant General Freight Agent of the St. Louis-San Francisco at Tulsa and Mr. Woods is his friend, which are known as the Frisco lines in Texas.

(Admitted by Mr. Fulbright that the witness is qualified to testify with reference to traffic matters.)

In June 1921 the rates from both Oklahoma and Texas to New England points and Seaboard via Galveston were based on the combinations over Galveston. The combinations basis was likewise to Ohio through St. Louis and Memphis gateways. The combination basis was disturbed by General Order 28.

The combination from Oklahoma is proper because in handling shipments via Galveston and New York, transportation expenses are incurred that would not be incurred by movement via the all rail lines. In the movement of cotton to Galveston the equipment is used in assembling the cotton in Oklahoma, this same equipment is made empty at Galveston and return north. It is necessary for the rail carriers to place these cars, perform a terminal service at the wharf at Galveston in order for the boat companies to load the cotton. When the cotton reaches New York, destined to New England, it has to undergo another terminal service, either transferring to other boats for the New England coast where same goes to the ultimate destination or it may be loaded into cars and forwarded by rail.

The witness offered Exhibit No. 11, a rate statement showing the rates via Galveston to New York on Galveston combination.

[Vol. 112] The witness offered Exhibit No. 12, a rate statement showing the rates from the same Oklahoma points to New York via St. Louis. Distances are also shown on each of the two foregoing exhibits. It is shown that the rate from Madill, for instance, to New York via St. Louis is somewhat greater than from the same point to New York via the Gulf, the distance to St. Louis being somewhat greater than to Galveston. At the bottom of the exhibits are shown points from which the rates to New York via St. Louis are somewhat less than the rates to New York via the Gulf. In these latter cases [Vol. 112] the mileage to Galveston is greater than it is to St. Louis. The witness stated that he believed this to be a proper adjustment.

The witness offered Exhibit No. 13 consisting of four pages. Rates in effect on December 31, 1923 are shown in all of these exhibits. The 50 per cent reduction that expires on June 30 is not taken into consideration.

The witness offered Exhibit No. 14.

The witness offered Exhibit No. 15 which is a statement showing mileages from New York and St. Louis to New England points.

The witness offered Exhibit No. 16 which is a statement showing rates on cotton from Texas points to New York via Galveston, the short line mileage to Galveston and the short line mileage via reasonably workable routes.

The witness offered Exhibit No. 17 which is a statement showing rates on cotton from the same Texas points shown in Exhibit No. 16 to interior New England points via Galveston.

The witness offered Exhibit No. 18 which is a statement showing all rail rates on cotton from the same Texas points to the same New England points.

The witness offered Exhibit No. 19 which is a statement showing the distances from the same Texas points to St. Louis, all rail, via short workable routes.

The witness offered Exhibit No. 20 which is a statement comparing the rail distances from Oklahoma points to New England points via Galveston and the all rail distances via St. Louis.

The witness offered Exhibit No. 21 which is a statement showing the rail distances from Texas points to New England points via Galveston and the all rail distances from and to the same points via St. Louis. In Exhibits 20 and 21, using Mr. Dalrell's theory of three water miles for one land mile, 727 miles might be added to the distance shown via Galveston.

The witness stated that the main lines in Texas of the Company he represents is made up of four lines. The Prices of Texas, the Ft. Worth & Rio Grande, Brownwood North & South and the Paris & Great Northern. The Prices of Texas extends from the Red River [fol. 143] to Ft. Worth and Dallas, Ft. Worth & Rio Grande extends from Ft. Worth to Menard and the Brownwood, North and South, to Brady. The St. Louis-San Francisco Railway Company operates a railroad of something like 5,200 miles outside of the State of Texas. Its southern terminus is at the Red River, its northern terminal are Ellsworth, Kansas, Kansas City, Kansas and St. Louis, Missouri. It has lines operating in various directions through both Kansas and Missouri.

To eastern Seaboard territory from Oklahoma points the St. Louis-San Francisco Railway Company reaches the gateways of Memphis and St. Louis. St. Louis is by far the most direct route and the one used, although there is a considerable quantity shipped through Memphis. The connections of the Prices in St. Louis and Memphis are the same in number as those testified to by Mr. Schnitzer. The Prices has a line beyond Birmingham that the Rock Island does not have. The Prices route to Seaboard is an ideal route.

"Trial Officer: The briefs will be due May 25th. The hearing is closed.

(Whereupon, at 1:30 p. m., April 22, 1922, the hearing in the above matter was closed.)"

[fol. 144] STIPULATION RE EXHIBITS

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, by their solicitors, respectively, as follows:

1. That the exhibits attached to the Bill of Complaint, being Exhibit A, the complaint of the Houston Cotton Exchange and Board of Trade, et al., which was filed with the Interstate Commerce Commission; Exhibit B, being the proposed report by Fred N. Oliver, Examiner; Exhibit C, being the report of the Commission by Division 4, decided January 23, 1923; and Exhibit D, being the report of the Commission on further argument, decided November 1, 1921,

are true and correct copies of the original documents, respectively, copies of which, certified to by the Secretary of the Interstate Commerce Commission, were received in evidence in the District Court.

2. That the Orders of the Interstate Commerce Commission in this case which are set out in the Bill of Complaint, being the order of the Commission entered March 9th, 1925, and set out on pages 9, [fol. 145] 10, 11 and 12 of the Bill of complaint; the order of the Commission entered March 28th, 1925, and set out on pages 12 and 13 of the Bill of Complaint; and the order of the Commission entered April 29th, 1925, and set out on page 13 of the Bill of Complaint, are true and correct copies of the original orders, respectively, copies of which, certified to by the Secretary of the Interstate Commerce Commission, were received in evidence in the District Court.

3. That copies of the following documents, under the certificate of the Secretary of the Interstate Commerce Commission, were received in evidence in the District Court:

(a) Answer of The Chicago, Rock Island & Pacific Railway Company and The Chicago, Rock Island & Gulf Railway Company, filed in the proceeding before the Interstate Commerce Commission;

(b) Petition for re-hearing filed with the Interstate Commerce Commission by the Atchison, Topeka and Santa Fe Railway Company, The Chicago, Rock Island & Pacific Railway Company, and other carriers;

(c) Application on behalf of defendants for modification of the order, filed in the proceeding before the Interstate Commerce Commission; and that the copies thereof, attached hereto, are true and correct copies of the original documents which the Clerk of the District Court may include in the transcript of the record on appeal.

4. That the copies of the affidavit of Ernest D. Mills, and of the certified copy of the telegram from F. A. Leland, hereto attached, are true and correct copies of the documents received in evidence in the District Court, which the Clerk of the District Court may include in the transcript of the record on appeal.

[fol. 146] 5. That the Clerk of the District Court shall include this Stipulation in the transcript of the record on appeal.

Lasseter, Harrison & Pearson, M. G. Roberts, and A. B. Enoch, Solicitors for Plaintiffs. Blackburn Esterline, Assistant to the Solicitor General of the United States. Daniel W. Knowlton, Solicitor for the Interstate Commerce Commission. R. C. Fulbright, Solicitor for Houston Cotton Exchange and Board of Trade and Dallas Cotton Exchange.

[fol. 147] EXHIBIT No. 1 IN EVIDENCE

Production by States

(Taken from Department of Commerce, Bureau of the Census, Bulletin No. 147, Pages 14-15.)

States	1920	1919	1918	1917
Alabama	670,330	716,655	789,265	520,906
Arizona	105,191	58,472	54,215	21,140
Arkansas	1,182,010	867,177	957,118	953,587
California	77,892	59,082	71,479	58,974
Florida	19,443	17,317	34,951	48,178
Georgia	1,447,159	1,678,758	2,117,680	1,885,054
Louisiana	389,569	303,035	582,598	629,719
Mississippi	900,371	950,907	1,193,122	886,269
Missouri	76,328	62,667	59,797	58,937
North Carolina	949,484	867,253	919,338	655,656
Oklahoma	1,302,610	1,002,178	585,149	955,342
South Carolina	1,652,177	1,462,277	1,581,726	1,267,135
Tennessee	314,811	301,408	317,982	238,806
Texas	4,148,399	2,960,335	2,610,337	3,041,726
Virginia	31,898	23,976	25,235	20,155
All other states	13,298	4,935	6,228	5,658
Total in U. S.	13,270,970	11,325,532	11,906,480	11,248,242

Exhibit Showing Consumption of Cotton in the United States

(Taken from Department of Commerce, Bureau of the Census, Bulletin No. 147, Pages 43-44.)

States	1918	1919	1920	1921
Connecticut	138,192	124,026	135,939	95,407
Maine	185,418	157,414	194,431	153,165
Maryland	72,090	65,091	66,364	41,317
Massachusetts	1,459,291	1,324,815	1,454,325	922,482
New Hampshire	310,478	267,501	294,289	220,241
New Jersey	49,518	38,007	37,075	31,364
New York	240,310	209,048	233,729	130,793
Pennsylvania	46,906	37,180	41,739	24,429
Rhode Island	296,913	279,297	305,240	212,199
Vermont	12,228	11,907	12,902	10,103
Total	2,811,334	2,514,357	2,776,033	1,841,500
Alabama	374,792	326,773	367,468	309,646
Georgia	854,078	702,676	800,901	614,079
Louisiana	37,106	34,147	36,425	31,208
Mississippi	36,640	32,945	36,425	31,208
North Carolina	1,183,275	1,035,717	1,149,241	926,384
South Carolina	888,218	764,794	843,924	771,560
Tennessee	104,842	92,053	108,373	74,689
Texas	63,978	60,995	64,333	62,617
Virginia	97,457	94,264	112,747	105,352
Total	3,640,396	3,144,363	3,522,955	2,934,862

Illinois	12,718	11,643	13,006	10,754
Indiana	17,138	14,525	14,472	14,212
Kentucky	20,627	18,671	19,093	21,303
Total	50,483	44,859	46,571	46,269
All other states	64,276	62,377	74,175	70,041
Total in U. S.	6,566,489	5,765,936	6,419,734	4,892,672

[fol. 149] EXHIBIT NO. 3 IN EVIDENCE

Cotton Production in the State of Oklahoma, by Counties, for the Year 1920

(Taken from Department of Commerce, Bureau of the Census, Bulletin No. 147, Page 113)

County	Number of bales
Adair	2,307
Atoka	14,191
Beckham	22,618
Bryan	36,188
Caddo	31,629
Carter	10,407
Cherokee	12,040
Choctaw	19,453
Cleveland	20,320
Coal	14,444
Comanche	19,523
Cotton	14,571
Creek	35,132
Custer	1,391
Garvin	52,184
Grady	30,888
Greer	14,528
Harmon	17,042
Haskell	25,470
Hughes	56,063
Jackson	46,866
Jefferson	15,492
Johnson	13,900
Kingfisher	1,334
Kiowa	22,883
Latimer	5,836
Le Flore	46,871
Lincoln	49,237
Logan	13,505
Love	5,278
McClain	25,546
McCurtain	20,653
McIntosh	42,056
Marshall	10,354
Mayes	8,291
Murray	12,854
Muskogee	46,134
Okfuskee	50,711
Oklahoma	17,880
Okmulgee	18,620
Osage	4,430
Pawnee	3,120

County	Number of bales
Payne	6,465
Pittsburg	47,757
Pontotoc	39,234
Pottawatomie	61,726
Pushmataha	12,813
Roger Mills	2,201
Seminole	39,496
Sequoyah	44,244
Stephens	28,171
Tillman	35,206
Tulsa	6,633
Waggoner	15,078
Washita	20,723
All others	2,621
Total bales	1,302,610

[fol. 150] EXHIBIT No. 4 IN EVIDENCE

From—	To—	Dist., miles.	Route.
Elk City, Okla.....	Galveston	558	W. F. & N. W. Wichita Falls, Texas, F. W. & D. C. Fort Worth, Texas, Shortline Beyond.
Duran, Okla.....	"	383	M. K. & T. Denison, Texas, Shortline Beyond.
Anadarko, Okla.....	"	497	C. R. I. & P. Ft. Worth, Texas, Shortline Beyond.
Ardmore, Okla.....	"	412	Santa Fe Gainesville, Texas, Shortline Beyond.
Hugo, Okla.....	"	399	Frisco Paris, Texas, Shortline Beyond.
Purcell, Okla.....	"	480	Santa Fe Gainesville, Texas, Shortline Beyond.
Lawton, Okla.....	"	461	C. R. I. & P. Fort Worth, Texas, Shortline Beyond.
Sapulpa, Okla.....	"	553	Frisco, Henryetta, Okla., K. O. & G. Durant, Okla., M. K. & T. Denison, Texas, Shortline Beyond.
Pauls Valley, Okla....	"	458	Santa Fe Gainesville, Texas, Shortline Beyond.
Chickasha, Okla.....	"	483	C. R. I. & P. Ft. Worth, Texas, Shortline Beyond.
Hollis, Okla.....	"	532	W. F. & N. W. Wichita Falls, Texas, Shortline Beyond.
Stigler, Okla.....	"	565	Mid Valley Panama Okla. KCS Beaumont, Texas, G. C. & S. F.
[fol. 151]			
Holdenville, Okla.....	Galveston	485	Frisco, Denison, Texas, Shortline Beyond.
Altus, Okla.....	"	498	W. F. & N. W. Wichita Falls, Texas, Shortline, Beyond.

Waurika, Okla.....	"	.....	420	C. R. I. & P. Ft. Worth, Texas, Shortline Beyond.
Hobart, Okla.....	"	.....	518	Frisco Frederick, Okla. W. F. & N. W. Wichita Falls, Texas, Shortline Beyond.
Wister, Okla.....	"	.....	487	Frisco Paris, Texas, Shortline beyond.
Davenport, Okla.....	"	.....	536	Santa Fe Gainesville, Texas, Shortline Beyond.
Byars, Okla.....	"	.....	470	Santa Fe Gainesville, Texas, Short-line Beyond.
Checotah, Okla.....	"	.....	499	M. K. & T. Denison, Texas, Shortline Beyond.
Muskogee, Okla.....	"	.....	521	M. K. & T. Denison, Texas, Shortline Beyond.
Weleetka, Okla.....	"	.....	511	Frisco Denison, Texas, Shortline Beyond.
Oklahoma City, Okla...	"	.....	513	Santa Fe Gainesville, Texas, Shortline Beyond.
Okmulgee, Okla.....	"	.....	530	Frisco Henryetta, Okla., K. O. & G. Durant Okla. M. K & T. Denison, Texas, Shortline Beyond.
[fol. 152]				
McAlester, Okla.....	"	.....	495	M. K. & T. Denison, Texas, Shortline beyond.
Ada, Oklahoma.....	"	.....	450	Frisco Denison, Texas, Shortline beyond.
Tecumseh, Okla.....	Galveston	.....	503	Santa Fe Gainesville, Texas, Shortline Beyond.
Seminole, Okla.....	"	.....	506	C. R. I. & P. Holdenville, Okla. Frisco Denison, Texas, Shortline Beyond.
Sallisaw, Okla.....	"	.....	553	K. C. S. Beaumont, Texas, G. C. & S. F.
Duncan, Okla.....	"	.....	443	M. K. & T. Denison, Texas, Shortline Beyond.
Frederick, Okla.....	"	.....	472	W. F. & N. W. Wichita Falls, Texas, F. W. & D. C. Ft. Worth, Texas, Shortline Beyond.
Waggoner, Okla.....	"	.....	537	M. K. & T. Denison, Texas, Shortline Beyond.
Cordell, Okla.....	"	.....	541	Frisco Frederick, Oklahoma, W. F. & N. W. Wichita Falls, Texas, F. W. & D. C. Fort Worth, Texas, Shortline beyond.
Average Distance Oklahoma to Galveston..			493	

From—	To—	Dist., miles.	Route.
Galveston, Texas.....	New York.....	727 Rail miles figured on ratio of 3 water miles as equivalent to one rail mile—used 2,180 statu-e miles Galveston to New York.	Via Mallory or Morgan Steamship line.
New York.....	Albany, N. Y.....	142	Distances taken from Rand McNally Atlas.
	Baltimore, Md.....	188	
	Boston, Mass.....	233	
	Lowell, Mass.....	259	
	Philadelphia, Pa.....	92	

[fol. 154]

EXHIBIT No. 5 IN EVIDENCE

Distances to St. Louis, Mo.

From—	Dist., miles	Route
Elk City, Okla.	667	16
Durant, Okla.	563	2
Anadarko, Okla.	600	14
Ardmore, Okla.	602	10
Hugo, Okla.	560	1
Purcell, Okla.	576	13
Lawton, Okla.	631	1
Sapulpa, Okla.	438	1
Pauls Valley, Okla.	580	9
Chickasha, Okla.	582	1
Hollis, Okla.	724	W. F. & N. W., Altus, Okla, thence Route 1.
Stigler, Okla.	468	Mid. Valley Rock Island, Okla. Frisco.
Holdenville, Okla.	509	8
Altus, Okla.	688	1
Waurika, Okla.	646	14
Hobart, Okla.	654	14
Wister, Okla.	455	Frisco.
Davenport, Okla.	487	Frisco.
Byars, Okla.	566	9
Checotah, Okla.	447	M., K. & T., Vinita, Okla., Frisco.
Muskogee, Okla.	425	2
Weleetka, Okla.	497	Frisco.
Oklahoma City, Okla.	543	1
Okmulgee, Okla.	470	1
McAlester, Okla.	488	2

From—	Dist., miles	Route
Ada, Okla.	597	8
Tecumseh, Okla.	523	Santa Fe Davenport, Okla., Frisco.
Seminole, Okla.	541	C., R. I. & P., Hilldreville, Okla., Frisco.
Sullivan, Okla.	643	5½
[Old 555] Duncan, Okla.	621	5½
Frederick, Okla.	694	1
Waggoner, Okla.	439	2
Cordell, Okla.	663	Frisco.
Average from Oklahoma	554	

From—	To—	Dist., miles	Route
St. Louis, Mo.	Albany, N. Y.	1,030	Distances taken from Rand McNally Atlas.
	Baltimore, Md.	995	
	Boston, Mass.	1,240	
	Lowell, Mass.	1,276	
	New York, N. Y.	1,089	
	Philadelphia, Pa.	992	

Routes

1 St. L. & S. F. Direct.
2 W. K. & T. Viola, Oklahoma, St. L. & S. F.
2½ Mo. Pac., Van Buren, Ark., St. L. & S. F.
3 St. L. & S. F. Haworth, Okla., K. O. & G. Muskogee, Okla., W. K. & T. Viola, Okla., St. L. & S. F.
4 Santa Fe, Ada, Okla., St. L. & S. F. Thence Route 6.
10 C., R. I. & P., Seminole, Okla. Thence Route 2.
11 Santa Fe, Oklahoma City, Oklahoma, St. L. & S. F.
12 C., R. I. & P., Chickasha, Okla., St. L. & S. F.
13 C., R. I. & P., Oklahoma City, Oklahoma, St. L. & S. F.

(Rand McNally Statistic No. 3 on Southwest, marked with blue pages 699a, 699b, and 699c.)

Exhibit No. 7 in Evidence

This exhibit shows destination points in New England spinning flivvies and their relationship to basing points via all rail routes. In comparison with this is shown their relationship to those same basing points when the movement is via Gulf.

From Oklahoma

To—	Via all-rail routes to—	Via Gulf
Arrowsville, N. Q.	Boston	55¢ over Boston
Abbott, Mass.	"	17½ " "
Abbottsburg (or), N. Q.	"	22½ " "
Absalom, Md.	Baltimore	2½ over Baltimore
Abbie, L. I.	Boston	0 " Boston
Abbott, Me.	"	22 " "
Abbottsville, Pa.	Philadelphia	11½ " Philadelphia
Abercrombie, Ohio	5¢ over Philadelphia	16½ " "
Aaronia, Pa.	Philadelphia	0 " "
Aaronsburg, Mass.	Boston	22½ " Boston
Aaronsburg, N. Y.	Albany	Same as Albany
Aaronsburg, Mass.	Boston	17½ over Boston
Abasand, Pa.	Philadelphia	Same as Philadelphia
Abbott, N. Q.	"	5¢ over Philadelphia
Abbottsburg, L. I.	Boston	0 over Boston
Abbottsburgh, Me.	5¢ over Boston	22½ over "
Abbottsburg, Pa.	Philadelphia	0 " Philadelphia
Abbottsville, L. I.	Boston	0 " Boston
Abbottsville, Me.	Baltimore	Same as Baltimore
Abbottsville, N. Q.	Boston	22½ over Boston
Abbottsville, Mass.	"	17½ over Boston
Abbottsville, N. H.	"	22½ " "

From Oklahoma

To—	Via all rail same as—	Via Gulf
Assonet, Mass.	Boston	15½ over Boston.
Ashton, R. I.	"	19 " "
Ashulot, N. H.	"	15 " "
Athol, Mass.	"	19½ " "
Atwater, P. Q.	Philadelphia	23 " Philadelphia.
Auburn, Me.	4¢ over Boston	25 " Boston.
Augusta, Me.	4¢ " "	33 " "
Ballardvale, Mass.	Boston	15½ " "
Baltic, Conn.	"	15 " "
Bar Mills, Me.	"	22 " "
Barnsted, N. H.	"	22 " "
Barre, Mass.	"	15½ " "
Barre Plains, Mass.	"	14 " "
Barrowsville, Mass.	"	15½ " "
Barton, Vt.	4¢ over Boston	20½ " "
Beacon Falls, Conn.	Boston	4½ " "
Beauharnois, P. Q.	"	29 " "
Bellefonte, R. I.	"	14 " "
Belleville, Ont.	Philadelphia	31 " Philadelphia.
Bellevue, P. Q.	"	24 " "
Belmont, Mass.	Boston	15½ " Boston.
Belmont, N. H.	"	22 " "
Bemis, Mass.	"	21 " "
Bennington, Vt.	"	20½ " "
Berkley, R. I.	"	9 " "
Berkshire, Mass.	"	15½ " "
Berlin, Mass.	"	18 " "

Bernardston, Mass.	"	15½	"	"
Bethlehem, Pa.	Philadelphia	16½	"	Philadelphia.
Beverley, Mass.	Boston	9	"	Boston.
Biddeford, Me.	"	22	"	"
Billerica, Mass.	"	18	"	"
Binghampton, N. Y.	Albany	8	"	Albany.
Blackinton, Mass.	Boston	8	"	Boston.
Blackstone, Mass.	"	19½	"	"
Blair, N. H.	4¢ over Boston	20½	"	"
Bloomfield, N. J.	New York	17½	"	New York.
Bloomsburg, Pa.	Philadelphia	10½	"	Philadelphia.
Bondsville, Mass.	Boston	24	"	Boston.
Bordentown, N. J.	New York	25	"	New York.
Bound Brook, N. J.	" "	19½	"	" "
[fol. 157] Bowmanville, Ont.	Philadelphia	31¢	over	Philadelphia.
Bradford, Mass.	Boston	18½	"	Boston.
Bradshaw, Md.	Baltimore	Same as Baltimore.		
Brampton, Ont.	Albany	26	over	Albany.
Brattleboro, Vt.	Boston	15	"	Boston.
Bridesburg, Pa.	Philadelphia	Same as Philadelphia.		
Bridgeport, Conn.	Boston	1	over	Boston.
Bridgeport, Pa.	Philadelphia	3	"	Philadelphia.
Brightwood, Mass.	Boston	24	"	Boston.
Bristol, Conn.	Boston	7	"	"
Bristol, N. H.	"	22	"	"
Bristol, Pa.	Philadelphia	Same as Philadelphia.		
Broadalbin, N. Y.	12½¢ over Albany	15	over	Albany.
Brookfield, Mass.	Boston	9	"	Boston.
Brookville, Pa.	Albany	14	"	Albany.

From Oklahoma

To—	Via all rail same as—	Via Gulf
Brunswick, Me.	4¢ over Boston	25 over Boston.
Burleyville, N. H.	Boston	20½ " "
Burlington, Vt.	"	22 " "
Buttonwoods, R. I.	"	14 " "
Byfield, Mass.	"	19½ " "
Cambridge, Mass.	"	15½ " "
Cambridgeport, Mass.	"	Same as Boston.
Camden, N. J.	Philadelphia	Same as Philadelphia.
Campbellford, Ont.	"	31 over Philadelphia.
Campton, N. H.	4¢ over Boston	15½ " Boston.
Canonchet, R. I.	Boston	15½ " "
Canton, Mass.	"	15½ " "
Carbondale, Pa.	Philadelphia, Pa.	11½ " Philadelphia.
Cardigan, N. H.	Boston	20½ " Boston.
Cardington Mills, Pa.	Philadelphia	10½ " Philadelphia.
Catskill, N. Y.	New York	28½ " New York.
Cavendish, Vt.	Boston	21½ " Boston.
Cecile Jct., P. Q.	Philadelphia	30½ " Philadelphia.
Cedar Brook, N. J.	9¢ over Philadelphia	6½ " "
Central Falls, R. I.	Boston	20 " Boston.
Centreville, R. I.	"	18½ " "
Chadwick, N. Y.	Albany	Same as Albany.
Changewater, N. J.	New York	21 over New York.
Charlestown, N. H.	Boston	15 " Boston.
Chateauguay, P. Q.	Philadelphia	24 " Philadelphia.
Cheasea, Mass.	Boston	15½ " Boston.
Chester, Pa.	Philadelphia	3 " Philadelphia.

Chesnut Hill, Pa.	Philadelphia	Same as Philadelphia.	
Chicopee, Mass.	Boston	9	over Boston.
Chicopee Falls, Mass.	"	9	" "
Claremont, N. H.	"	15	" "
Claremont Jct., N. H.	"	15½	" "
Clark Mills, N. Y.	Albany	5½	" Albany.
Clayville, N. Y.	"	8	" "
Clementon, N. J.	9¢ over Philadelphia	16½	" Philadelphia.
Clermont, Pa.	Albany	11½	" Albany.
Clifton, Pa.	Philadelphia	10½	" Philadelphia.
Clinton, Mass.	Boston	15	" Boston.
Clyde, R. I.	"	9	" "
Coatesville, Pa.	Philadelphia	6	" Philadelphia.
Coaticook, P. Q.	Boston	21½	" Boston.
Cobourg, Ont.	Philadelphia	31	" Philadelphia.
Cockeysville, Md.	Baltimore	2½	" Baltimore.
Cohoes, N. Y.	Albany	Same as Albany.	
Coldbrook, Mass.	Boston	12	over Boston.
Columbia, Pa.	Philadelphia	10½	" Philadelphia.
Communipaw, N. J.	New York	17½	" New York.
Concord, Mass.	Boston	15½	" Boston.
Concord, N. H.	"	20½	" "
Concord Jct., Mass.	"	15½	" "
Conimicut, R. I.	"	14	" "
Conshohocken, Pa.	Philadelphia	3	" Philadelphia.
Conway, Mass.	Boston	13	" Boston.
Cordaville, Mass.	"	9	" "
Corinna, Me.	4¢ over Boston	28	" "
Cornich, Me.	4¢ " "	26	" "

From Oklahoma

To—	Via all rail same as—		Via Gulf	
Cornwall, Ont.	Philadelphia	23	over	Philadelphia.
[fol. 158] Coteau Jct., P. Q.	Philadelphia	27½¢		Philadelphia.
Cote des Neiges, P. Q.	"	23	"	"
Cote St. Paul	"	23	"	"
Cummings, Me.	Boston	22	"	Boston.
Dalton, Mass.	"	15½	"	"
Danielson, Conn.	"	9	"	"
Dannemora, N. Y.	"	22½	"	"
Danville, Pa.	Philadelphia	10½	"	Philadelphia.
Darby, Pa.	"	3	"	"
Darlington, R. I.	Boston	15½	"	Boston.
Dayville, Conn.	"	16	"	"
Deep River, Conn.	"	8	"	"
Deerfield, Mass.	"	15½	"	"
De Ruyter, N. Y.	Albany	8	"	Albany.
Dexter, Me.	4¢ over Boston	18	"	Boston.
Dodgeville, Mass.	Boston	9	"	"
Dover, N. H.	"	22	"	"
Dover, N. J.	New York	25	"	New York.
Downington, Pa.	Philadelphia	6	"	Philadelphia.
Doylestown, Pa.	"	6½	"	"
Drumbe, Ont.	Albany	19½	"	Albany.
Eagleville, Conn.	Boston	8	"	Boston.
East Boston, Mass.	"	Same as Boston.		
E. Brookfield, Mass.	"	9 over Boston.		
E. Cambridge, Mass.	"	Same as Boston.		
E. Conshohocken, Pa.	Philadelphia	3 over Philadelphia.		

E. Dedham, Mass.	Boston	15½	over Boston.
E. Douglas, Mass.	"	9	" "
East Falls, Pa.	Philadelphia	3	" Philadelphia.
E. Greenwich, R. I.	Boston	9	" Boston.
E. Haddam, Conn.	"	8	" "
Easthampton, Mass.	"	12	" "
East Jaffrey, N. H.	"	25	" "
Easton, Pa.	Philadelphia	12½	" Philadelphia.
E. Providence Wharf, R. I.	Boston	9	" Boston.
E. Taunton, Mass.	"	15½	" "
E. Wilton, Me.	4¢ over Boston	28	" "
Eddystone, Pa.	Philadelphia	12½	" Philadelphia.
Elizabeth, N. J.	New York	17½	" New York.
Elkton, Md.	Philadelphia	10½	" Philadelphia.
Elmira, N. Y.	Albany	Same as Albany.	
Elmira Heights, N. Y.	"	"	" "
Elora, Ont.	3½¢ over Albany	26½ over	"
Enfield, N. H.	Boston	18½	" Boston.
Esmond, R. I.	Boston	9	" "
Essex, Conn.	"	8	" "
Everett, Mass.	"	15½	" "
Exeter, N. H.	"	9½	" "
Fairfield, Me.	4¢ over Boston	28	" "
Fair Hill, Pa.	Philadelphia	Same as Philadelphia.	
Fall River Wharf, Mass.	Boston	12	over Boston.
Falls Switch, Conn.	"	1½	" "
Fernwood, Pa.	Baltimore	5	Under Baltimore.
Firthcliff, N. Y.	New York	32	over N. Y.
Fitchburg, Mass.	Boston	15	over Boston.
Fitchville, Conn.	"	4½	" "

To—	Via all rail same as—	Via Gulf
Florence, N. J.	New York	25 over New York.
Fonda, N. Y.	Albany	1½ " Albany.
Forest, Ont.	"	26 " "
Forestdale, R. I.	Boston	18½ " Boston.
Forge Village, Mass.	"	15 " "
Fort Plain, N. Y.	Albany	1½ " Albany.
Foxcroft, Me.	4¢ over Boston	35 " Boston.
Fox Point Wharf, R. I.	Boston	12 " "
Framingham, Mass.	"	20½ " "
Framingham Centre, Mass.	"	20½ " "
Frankford, Pa.	Philadelphia	Same as Philadelphia.
Franklin, Mass.	Boston	9 over Boston.
Franklin, N. H.	"	20½ " "
Fulton, N. Y.	Albany	8 " Albany.
Fultonville, N. Y.	"	1½ " "
Galt, Ont.	"	19½ " "
Gardiner, Me.	4¢ over Boston	18 " Boston.
[fol. 158½] Garfield, N. J.	New York	24½¢ over New York.
Georgiaville, R. I.	Boston	18 " Boston.
Germantown, Pa.	Philadelphia	Same as Philadelphia.
Gilbertville, Mass.	Boston	14 over Boston.
Gleasondale, Mass.	"	15 " "
Glen Riddle, Pa.	Philadelphia	10½ " Philadelphia.
Gloucester, Mass.	Boston	20½ " Boston.
Gloucester, N. J.	Philadelphia	Same as Philadelphia.
Goffs Falls, N. H.	Boston	15½ over Boston.
Gonic, N. H.	"	22 " "

Goulds, R. I.	"		22	"	"
Gouverneur, N. Y.	"		14	"	"
Grafton, N. H.	"		20½	"	"
Graniteville, Mass.	"		15	"	"
Greenfield, Mass.	"		15½	"	"
Greenboro, Vt.	"		20½	"	"
Greenville, Conn.	"		11	"	"
Greenville, N. H.	"		15	"	"
Greenwich, N. Y.	14¢ over Albany		22½	"	Albany.
Greylock, Mass.	Boston		8	"	Boston.
Grosvenor Dale, Conn.	"		9	"	"
Groveland, Mass.	"		19	"	"
Guelph, Ont.	Albany		26	"	Albany.
Hadlyme, Conn.	Boston		8	"	Boston.
Halifax, N. S.	26½¢ over Phila.		44½	"	Philadelphia.
Harbor Jct. Wharf, R. I.	Boston		19	"	Boston.
Hardys, N. Y.	Albany		8	"	Albany.
Harris, R. I.	Boston		18½	"	Boston.
Harrisville, N. H.	"		15	"	"
Hartford, Conn.	"		8	"	"
Hartland, Me.	4¢ over Boston		35	"	"
Hatfield, Mass.	Boston		15	"	"
Haverhill, Mass.	"		18½	"	"
Havre de Grace, Md.	Philadelphia		10½	"	Philadelphia.
Hazleton, Pa.	"		10½	"	"
Hebronville, Mass.	Boston		15½	"	Boston.
Herkimer, N. Y.	Albany		4½	"	Albany.
Hespeler, Ont.	"		26	"	"
Higganum, Conn.	Boston		11½	"	Boston.

To—	Via all rail same as—		Via Gulf
Highland Falls, N. Y.	New York	21	over New York.
Highland Mills, N. Y.	" "	32	" " "
Highlands, P. Q.	Philadelphia	23	" Philadelphia.
Hillsboro, N. H.	Boston	15½	" Boston.
Hillsgrove, R. I.	"	20	" "
Hinsdale, N. H.	"	15	" "
Hinsdale, Mass.	"	15½	" "
Hochelaga, P. Q.	Philadelphia	23	" Philadelphia.
Holden, Mass.	Boston	15	" Boston.
Holliston, Mass.	"	9	" "
Holmesburg, Pa.	Philadelphia	Same as Philadelphia.	
Holyoke, Mass.	Boston	12	over Boston.
Hookset, N. H.	"	18½	" "
Hoosac Tunnel, Mass.	"	15½	" "
Hoosick Falls, N. Y.	"	11½	" "
Hope, R. I.	"	9	" "
Hope Valley, R. I.	"	16	" "
Hornell, New York	Albany	8	" Albany.
Housatonic, Mass.	Boston	15	" Boston.
Howarths, Mass.	"	9	" "
Hoxie, R. I.	"	14	" "
Hubbardston, Mass.	"	15	" "
Hudson, Mass.	"	15	" "
Hudson, N. H.	"	18	" "
Hudson, N. Y.	New York	28½	" New York.
Huntingdon, P. Q.	Boston	29	" Boston.
Huntington, Mass.	"	15½	" "

Ilchester, Md.	Baltimore	14	"	Baltimore.
Ilion, N. Y.	Albany	4½	"	Albany.
Indian Orchard, Mass.	Boston	12	"	Boston.
Ipswich, Mass.	"	19½	"	"
Islington, Conn.	Albany	21½	"	"
Jackson, R. I.	Boston	9	"	"
[fol. 159] Jamesville, Mass.	Boston	9¢	over	Boston.
Jefferson, Mass.	"	15	"	"
Jersey Shore, Pa.	Baltimore	Same as Baltimore.		
Jewett, Me.	Boston	22	over	Boston.
Jewett City, Conn.	"	15½	"	"
Johnson, Vt.	4¢ over Boston	20½	"	"
Johnsonville, N. Y.	Albany	12½	"	Albany.
Joslin, N. H.	Boston	15½	"	Boston.
Keene, N. H.	"	15	"	"
Kennebunk, Me.	"	20½	"	"
Kensington, Pa.	Philadelphia	Same as Philadelphia.		
Kentmere, Del.	"	5	over	Philadelphia.
Kingston, N. Y.	New York	25	"	New York.
Kingston, Ont.	Philadelphia	21	"	Philadelphia.
Laconia, N. H.	Boston	22	"	Boston.
LaFayette, R. I.	"	20	"	"
Lakeport, N. H.	"	32	"	"
Lakewood, R. I.	"	14	"	"
Lancaster, Mass.	"	15	"	"
Lancaster, Pa.	Philadelphia	10½	"	Philadelphia.
Langhorne, Pa.	"	4½	under	Philadelphia.
Lansdale, Pa.	"	3	over	Philadelphia.
Landsdowne, Pa.	"	10½	"	"
Laurel, Md.	Baltimore	4	"	Baltimore.

From Oklahoma

To—	Via all rail same as—		Via Gulf
Lawrence, Mass.	Boston	15½	over Boston.
Lebanon, Conn.	"	4½	" "
Lebanon, N. H.	"	18½	" "
Lehighton, Pa.	Philadelphia	17	" Philadelphia.
Lenni, Pa.	"	10½	" "
Lennoxville, P. Q.	Boston	20½	" Boston.
Leominster, Mass.	"	20½	" "
Leroy, N. Y.	Albany	8	" Albany.
Lewiston, Me.	4¢ over Boston	24	" Boston.
Lisbon, N. H.	4¢ " "	20½	" "
Lisbon, Me.	4¢ " "	25	" "
Lisbon Falls, Me.	4¢ " "	21	" "
Little Falls, N. Y.	New York	34½	" New York.
Littleton, Mass.	Boston	15	" Boston.
Lochmere, N. H.	"	20½	" "
Lock Haven, Pa.	Baltimore	Same as Baltimore.	
Longmeadow, R. I.	Boston	14	over Boston.
Lonsdale, R. I.	"	19	" "
Lowell, Mass.	"	15	" "
Ludlow, Mass.	"	12	" "
Ludlow, Vt.	"	22	" "
Machine Shop, Mass.	"	19½	" "
Madison, Me.	16½¢ over Boston	39	" "
Magog, P. Q.	Boston	21½	" "
Malden, Mass.	"	18½	" "
Malone, N. Y.	"	22½	" "
Manayunk, Pa.	Philadelphia	3	" Philadelphia.

Manchester, N. H.	Boston	15½	"	Boston.
Manheim, Pa.	Philadelphia	9½	"	Philadelphia.
Mansfield, Conn.	Boston	8	"	Boston.
Mansfield, Mass.	"	15½	"	"
Manville, R. I.	"	19	"	"
Maple Grove, Mass.	"	15½	"	"
Marlboro, Mass.	"	18	"	"
Marlboro, N. H.	"	15	"	"
Martinsburg, W. Va.	Baltimore	4½	"	Baltimore.
Martisco, N. Y.	Albany	8	"	Albany.
Marysville, Ont.	Philadelphia	31	"	Philadelphia.
Maynard, Mass.	Boston	15	"	Boston.
Mays Landing, N. J.	12½¢ over Phila.	10½	"	Philadelphia.
Mechanic Falls, Me.	4¢ over Boston	25	"	Boston.
Mechanicsville, N. Y.	Albany	8	"	Albany.
Medford, Mass.	Boston	18½	"	Boston.
Mellenville, N. Y.	"	9	"	"
Meredith, N. H.	"	22	"	"
Methuen, Mass.	"	15½	"	"
Middletown, Conn.	"	10	"	"
[fol. 160] Middletown, Pa.	Philadelphia	10½¢	over	Philadelphia.
Middleville, N. Y.	Albany	9	"	Albany.
Midland Park, N. J.	New York	32	"	New York.
Mifflin, Pa.	Baltimore	3½	"	Baltimore.
Mile End, P. Q.	Philadelphia	23	"	Philadelphia.
Milford, Mass.	Boston	9	"	Boston.
Milford, N. H.	"	15½	"	"
Milbourne Mills, N. H.	Philadelphia	Same as Philadelphia.		
Millbury, Mass.	Boston	9	over	Boston.
Milltown, Me.	24½¢ over Boston	45	"	"

From Oklahoma

To—	Via all rail same as—	Via Gulf
Milltown, N. B.	26½ over Phila.	35½ over Philadelphia.
Millville, N. J.	9 "	10½ " "
Milton, Pa.	Baltimore	2½ under Baltimore.
Mohawk, N. Y.	Albany	4½ over Albany.
Monoton, N. B.	26¢ over Phila.	42½ " Philadelphia.
Montgomery, N. Y.	New York	37 " New York.
Montmorency Falls, P. Q.	7 over Boston	33½ " Boston.
Monmouth, Me.	4¢ over Boston	28 " "
Monson, Mass.	Boston	9 " "
Montreal, P. Q.	Philadelphia	28 " Philadelphia.
Montville, Conn.	Boston	Same as Boston.
Moosup, Conn.	"	16 over Boston.
Mount Carmel, Pa.	Philadelphia	10½ " Philadelphia.
Mount Hermann, Mass.	Boston	15½ " Boston.
Mount Joy, Pa.	Philadelphia	10½ " Philadelphia.
Mount Tom, Mass.	Boston	14½ " Boston.
Muncy, Pa.	Baltimore	15 " Baltimore.
Napanee, Ont.	Philadelphia	25½ " Philadelphia.
Nashua, N. H.	Boston	15½ " Boston.
Natick, R. I.	"	13½ " "
Naukeag, Mass.	"	15½ " "
New Bedford, Mass.	"	12½ " "
New Britain, Conn.	"	7 " "
Newburgh, N. Y.	New York	21 " New York.
Newburyport, Mass.	Boston	19½ " Boston.
New Castle, Del.	Philadelphia	5 " Philadelphia.
New Erin, P. Q.	Boston	30 " Boston.

New Hartford, Conn.	"	7	"	"
New Harford, N. Y.	Albany	5½	"	"
New London, Conn.	Boston	Same as Boston.		
New Market, N. H.	"	19½	over Boston.	
Newport, N. H.	"	16	"	"
Newport, N. Y.	Albany	15½	"	Albany.
Newport Jct., Me.	4¢ over Boston	35½	"	Boston.
Newton, Mass.	Boston	9	"	"
Newton Lower Falls, Mass.	"	9	"	"
New York Mills, N. Y.	Albany	5½	"	Albany.
Norristown, Pa.	Philadelphia	3	"	Philadelphia.
North Acton, Mass.	Boston	18	"	Boston.
North Adams, Mass.	"	2	"	"
North Andover, Mass.	"	15½	"	"
North Berwick, Mass.	"	22	"	"
North Billerica, Mass.	"	15½	"	"
Northbridge, Mass.	"	20	"	"
N. Charlestown, N. H.	"	15½	"	"
N. Chelmsford, Mass.	"	15	"	"
North Dana, Mass.	"	18½	"	"
N. Dighton, Mass.	"	15½	"	"
Northfield, Mass.	"	15½	"	"
Northfield, Vt.	"	20½	"	"
N. Grafton, Mass.	"	9	"	"
N. Grosvenordale, Conn.	"	15½	"	"
N. Hatfield, Mass.	"	15½	"	"
North Ilion, N. Y.	Albany	4½	"	Albany.
N. Leominster, Mass.	Boston	15	"	Boston.
N. Oxford Mills, Mass.	"	9	"	"
N. Pownal, Vt.	"	15½	"	"

From Oklahoma

To—	Via all rail same as—		Via Gulf
N. Wales, Pa.	Philadelphia	3	over Philadelphia.
Norwalk, Conn.	Boston	6	" Boston.
Norwich, Conn.	"	1½	" "
Norwich, N. Y.	Albany	7½	" Albany.
Norwich, Vt.	4¢ over Boston	20½	" Boston.
Oakdale, Mass.	Boston	15½	" "
[fol. 161] Oakland, Me.	4¢ over Boston	29½¢	over Boston.
Oakland Beach, R. I.	Boston	14½	" "
Odenwelder, Pa.	Philadelphia	5½	under Philadelphia.
Oldtown, Me.	4¢ over Boston	33	over Boston.
Olney, Pa.	Philadelphia	Same as Philadelphia.	
Olneyville, R. I.	Boston	19	over Boston.
Oneida, N. Y.	Albany	5½	" Albany.
Orange, N. J.	New York	17½	" New York.
Oriskany, N. Y.	Albany	17	" Albany.
Oriskany Falls, N. Y.	"	5½	" "
Oswego, N. Y.	"	8	" "
Otter River, Mass.	Boston	15	" Boston.
Outremont, P. Q.	Philadelphia	31½	" Philadelphia.
Oxford, Me.	4¢ over Boston	26	" Boston.
Oxford, N. Y.	Albany	8	" Albany.
Palmer, Mass.	Boston	15½	" Boston.
Pawtucket, R. I.	"	20	" "
Peacedale, R. I.	"	14	" "
Penacook, N. H.	"	19½	" "
Pepperell, Mass.	"	15	" "
Perry, N. Y.	Albany	8	" Albany.

Perry's, N. Y.	"	8	"	"
Peterboro, N. H.	Boston	15	"	Boston.
Peterboro, Ont.	Philadelphia	25½	"	Philadelphia.
Phoenix Mills, N. Y.	Albany	8	"	Albany.
Pine Meadow, Conn.	Boston	12	"	Boston.
Pittsfield, Mass.	"	15½	"	"
Pittsfield, Me.	4¢ over Boston	33	"	"
Pittsfield, N. H.	Boston	22	"	"
Pittston, Pa.	Philadelphia	10½	"	Philadelphia.
Plainfield, Conn.	Boston	16	"	Boston.
Pleasant Valley, N. Y.	Boston	8	"	"
Pontiac, R. I.	"	18½	"	"
Port Hope, Ont.	Philadelphia	25½	"	Philadelphia.
Portland, Me.	Boston	20½	"	Boston.
Pottstown, Pa.	Philadelphia	5	"	Philadelphia.
Pottsville, Pa.	"	10½	"	Philadelphia.
Poughkeepsie, N. Y.	New York	25	"	New York.
Pownal, Vt.	Boston	12	"	Boston.
Preston, Ont.	Albany	25½	"	Albany
Proctorsville, Vt.	Boston	22	"	Boston.
Providence, R. I.	"	19	"	"
Putnam, Conn.	"	16	"	"
Quebec, P. Q.	"	26	"	"
Quinick, R. I.	"	18½	"	"
Quinapoxet, Mass.	"	15	"	"
Quinnebaug, Conn.	"	9	"	"
Raritan, N. J.	New York	24	"	New York.
Readfield, Me.	4¢ over Boston	28	"	Boston.
Reading, Pa.	Philadelphia	6½	"	Philadelphia.

From Oklahoma

To—	Via all rail same as—	Via Gulf
Readville, Mass.	Boston	15½ over Boston.
Reformatory, Mass.	"	15½ " "
Renfrew, Mass.	"	13½ " "
Rensselaer, N. Y.	Albany	Same as Albany.
Revere, Mass.	Boston	18½ over Boston.
Reynoldsville, Pa.	Albany	11½ " Albany.
Richfield Springs, N. Y.	Albany	8 " "
Richmond, Me.	4¢ over Boston	14 " Boston.
River Point, R. I.	4¢ " "	14 " "
Riverview, R. I.	Boston	20 " "
Rochdale, Mass.	"	14 " "
Rochester, N. H.	"	22 " "
Rochester, N. Y.	Albany	8 " Albany.
Rockdale, Pa.	Philadelphia	10½ " Philadelphia.
Rockfall, Conn.	Boston	10 " Boston.
Rockford, Del.	Philadelphia	5 " Philadelphia.
Rockville, Conn.	Boston	8 " Boston.
Rome, N. Y.	Albany	5½ " Albany.
Royalston, Mass.	Boston	14 " Boston.
Rutland, Mass.	"	14 " "
St. Henri, P. Q.	Philadelphia	23 " Philadelphia.
St. Hyacinthe, P. Q.	Boston	23 " Boston.
[fol. 162] St. Jerome, P. Q.	10½¢ over Phila.	29½¢ over Philadelphia.
St. John, N. B.	26½¢ " "	41½ " "
St. Johnsville, N. Y.	Albany	1½ " Albany.
St. Luc, P. Q.	26½¢ over Phila.	53 " Philadelphia.
St. Luc. Jct., P. Q.	Philadelphia	31½ " "

St. Stanislas, P. Q.	Boston	30	"	Boston.
St. Stephens, N. B.	26½¢ over Phila.	25½	"	Philadelphia.
St. Timothee, P. Q.	Philadelphia	24	"	"
Sabbattus, Me.	4¢ over Boston	25	"	Boston.
Saco, Me.	Boston	22	"	"
Salem, Mass.	"	19½	"	"
Salem, N. H.	"	18½	"	"
Salmon Falls, N. H.	"	22	"	"
Saratoga, N. H.	"	15	"	"
Savage Factory, Md.	Baltimore	4	"	Baltimore.
Saugus, Mass.	Boston	19½	"	Boston.
Saudersville, Mass.	"	19	"	"
Sawyer, N. H.	"	22	"	"
Saxonville, Mass.	"	9	"	"
Saybrook, Conn.	"	7	"	"
Saylesville, R. I.	"	15½	"	"
Schagticoke, N. Y.	Albany	12	"	Albany.
Schenectady, N. Y.	"	Same as Albany.		
Schuylerville, N. Y.	Boston	15½	over	Boston.
Scranton, Pa.	Philadelphia	10½	"	Philadelphia.
Shamokin, Pa.	"	10½	"	"
Shawinigan Falls, P. Q.	9¢ over Phila.	29½	"	"
Shelburne Falls, Mass.	Boston	15	"	Boston.
Shelton, Conn.	"	3½	"	"
Shenandoah, Pa.	"	9	"	"
Sherbrooke, P. Q.	"	26	"	"
Sherburne, N. Y.	Albany	8	"	Albany.
Shirley, Mass.	Boston	15	"	Boston.
Simsbury, Conn.	"	12	"	"
Skowhegan, Me.	4¢ over Boston	33	"	"

From Oklahoma

To—	Via all rail same as—	Via Gulf
Slatersville, R. I.	Boston	18½ over Boston.
Smiths Ferry, Mass.	"	14½ " "
Somersworth, N. H.	"	22 " "
Somerville, N. J.	New York	21 " New York.
South Acton, Mass.	Boston	15 " Boston.
S. Amsterdam, N. Y.	Albany	Same as Albany.
S. Ashburnham, Mass.	Boston	15½ over Boston.
S. Berwick, Me.	"	22 " "
S. Bethlehem, Pa.	Philadelphia	6½ " "
Southbridge, Mass.	Boston	18½ " "
S. Coventry, Conn.	"	5½ " "
S. Deerfield, Mass.	"	15½ " "
S. Little Falls, N. Y.	Albany	4½ " Albany.
S. Palmyra, N. Y.	"	8 " "
S. Providence, R. I.	Boston	19 " Boston.
South River, Mass.	"	15 " "
S. Sudbury, Mass.	"	18 " "
S. Swansea, Mass.	"	15½ " "
S. Vernon, Vt.	"	15½ " "
S. Windham, Conn.	"	4½ " "
S. Windham, Me.	4¢ over Boston	25 " "
Springfield, Mass.	Boston	14 " "
Springvale, Me.	"	22 " "
Stafford, Conn.	Boston	9 " "
State Line, Mass.	"	15½ " "
Sterling Jct., Mass.	"	15½ " "
Stillwater, N. Y.	Albany	12 " Albany.

Stittville, N. Y.	"	12	"	"
Stockport, N. Y.	New York	30	"	New York.
Streetsville, Ont.	Albany	19½	"	Albany.
Stroudsburg, Pa.	New York	25	"	New York.
Stuyvesant Falls, N. Y.	" "	32	"	" "
Sunbury, Pa.	Baltimore	5½	"	Baltimore.
Suncook, N. H.	Boston	19½	"	Boston.
Syracuse, N. Y.	Albany	8	"	Albany.
Taunton, Mass.	Boston	15½	"	Boston.
[fol. 163] Thorndike, Mass.	Boston	15¢	over	Boston.
Three Rivers, P. Q.	7¢ over Phila.	24½	"	Philadelphia.
Three Rivers, Mass.	Boston	15½	"	Boston.
Thwaites, Mass.	"	21	"	"
Tilton, N. H.	"	22	"	"
Toronto, Ont.	Albany	19½	"	Albany.
Trainer, Pa.	Philadelphia	3	"	Philadelphia.
Trenton, N. J.	New York	19½	"	New York.
Troy, N. H.	Boston	15	"	Boston.
Troy, N. Y.	Albany	Same as Albany.		
Turners Falls, Mass.	Boston	15	over	Boston.
Union, N. H.	"	22	"	"
Union Market, Mass.	"	15	"	"
Unionville, Conn.	"	11½	"	"
Upland, Pa.	Baltimore	10	under	Baltimore.
Utica, N. Y.	Albany	5½	over	Albany.
Valley Falls, N. Y.	"	8½	"	"
Valley Falls, R. I.	Boston	19	"	Boston.
Valleyfield, P. Q.	Philadelphia	27½	"	Philadelphia.
Vernon, Conn.	Boston	13½	"	Boston.
Versailles, Conn.	"	15½	"	"

From Oklahoma

To—	Via all rail same as—		Via Gulf
Victory Mills, N. Y.	Boston	21	over Boston.
Vineland, N. J.	9¢ over Philadelphia	10½	" Philadelphia.
Wachusett, Mass.	Boston	15½	" Boston.
Wakefield, R. I.	"	14	" "
Wallingford, Pa.	Philadelphia	10½	" Philadelphia.
Waltham, Mass.	Boston	15	" Boston.
Ware, Mass.	"	14	" "
Warren, Mass.	"	9	" "
Warren, Me.	4¢ over Boston	28	" "
Warren, R. I.	Boston	15½	" "
Waterford, N. Y.	Albany	8	" Albany.
Waterloo, N. Y.	"	8	" "
Watertown, Mass.	Boston	15½	" Boston.
Waterville, Me.	4¢ over Boston	29	" "
Watuppa, Mass.	Boston	15½	" "
Wauregan, Conn.	"	16	" "
Webb, N. H.	"	15½	" "
Webster, Mass.	"	9	" "
Webster Mills, Mass.	"	9	" "
Weir Branch, Mass.	"	15½	" "
Wellesley, Mass.	"	9	" "
Westcott, Me.	"	12	" "
W. Athens, N. Y.	New York	28½	" New York.
Westboro, Mass.	Boston	9	" Boston.
Westbrook, Me.	"	22	" "
W. Chelmsford, Mass.	"	15	" "
W. Conshohocken, Pa.	Philadelphia	3	" Philadelphia.

Westerly, R. I.	Boston	15½	"	Boston.
Westfield, Mass.	"	14	"	"
W. Fitchburg, Mass.	"	15	"	"
Westford, Mass.	"	15½	"	"
W. Kennebunk, Me.	"	22	"	"
W. Manayunk, Pa.	Philadelphia	3	"	Philadelphia.
Westminster, Mass.	Boston	15½	"	Boston.
Westmount, P. Q.	Philadelphia	23½	"	Philadelphia.
West Park, N. Y.	New York	25	"	New York.
West Port, N. H.	Boston	15½	"	Boston.
W. Rutland, Mass.	"	15½	"	"
W. Swanzey, N. H.	"	15	"	"
W. Warren, Mass.	"	9	"	"
W. Waterford, N. Y.	Albany	8	"	Albany.
W. Willington, Conn.	Boston	9	"	Boston.
Whately, Mass.	"	12	"	"
White Haven, Pa.	Philadelphia	10½	"	Philadelphia.
Whitesboro, N. Y.	Albany	10½	"	Albany.
Whitins, Mass.	Boston	19	"	Boston.
Whittenton, Mass.	"	15½	"	"
Wickford, R. I.	"	9	"	"
Wilkes-Barre, Pa.	Philadelphia	9	"	Philadelphia.
Wililamsport, Pa.	Baltimore	8½	"	Baltimore.
Williamsport, Md.	"	2½ under		"
[fol. 164] Williamstown, Mass.	Boston	15½¢ over		Boston.
Willimantic, Conn.	"	15½	"	"
Wilmington, Del.	Philadelphia	5	"	Philadelphia.
Wilton, Me.	4¢ over Boston	32	"	Boston.
Wilton, N. H.	Boston	15½	"	"
Winchendon, Mass.	Boston	14	"	"

From Oklahoma

To—	Via all rail same as—	Via Gulf
Winchester, Mass.	Boston	17½ over Boston.
Winchester, N. H.	"	15½ " "
Windsor Jct., N. S.	26½¢ over Phila.	44½ " Philadelphia.
Windsor, Vt.	Boston	15½ " Boston.
Windsor Lock, Conn.	"	13½ " "
Winslow, Me.	4¢ over Boston	28 " "
Winsted, Conn.	Boston	8 " "
Winthrop, Me.	4¢ over Boston	29 " "
Winooski, Vt.	Boston	21 " "
Wissahickon, Pa.	Philadelphia	3 " Philadelphia.
Wolfeboro, N. H.	Boston	22 " Boston.
Wood River Jct., R. I.	"	12 " "
Woodville, R. I.	"	16 " "
Woonsocket, R. I.	"	18½ " "
Worcester, Mass.	"	9 " "
Yantic, Conn.	"	4½ " "
Yardville, N. J.	New York	25 " New York.
Yarmouth, Me.	4¢ over Boston	25 " Boston.
Yarmouth, N. S.	28¢ over Phila.	44½ " Philadelphia.
Yarmouth Jct., Me.	4¢ over Boston	25 " Boston.
York, Pa.	Baltimore	Same as Baltimore.
Yonkers, N. Y.	New York	20½ over New York.
Zylonite, Mass.	Boston	15½ " Boston.

The all rail rates are any quantity, but in comparison with this the rates which we have shown as applying via Gulf are carload rates, minimum 20,000 pounds. On L. C. L. via Gulf the rates would be even higher than those shown herein, by amounts ranging from ½¢ to 14½ cents.

All rail bases taken from Southwestern Lines Tariff 89-E, Leland's I. C. C. 1467, pages 34 to 43 inclusive.

Via Gulf all bases taken from Sedgeman's Tariff 17-H, I. C. C. 135, pages 12 to 19.

Exhibit Showing Rates from Seaboard Territory to Oklahoma, All Rail, Compared with Rates via Gulf

First-class to Oklahoma City

8—649

From—	All-rail: To St. Louis	All-rail: West	Through	Via Gulf
Albany, N. Y.	153	219½	372½	300
Boston, Mass.	184½	219½	404	300
Burlington, Vt.	174½	219½	394	300
Lowell, Mass.	179½	219½	399	300
New London, Conn.	176½	219½	396	300
New York, N. Y.	184½	219½	404	300
Ogdensburg, N. Y.	174½	219½	394	300
Rutland, Vt.	174½	219½	394	300
	(F. L. Davis I. C. C. No. A-56.)	(F. A. Leland I. C. C. 1448.)		(F. A. Leland's 91 I. C. C. 1400.)

Bagging & Bags, Burlap Gunning or Jute—Carloads

From—	All-rail: To St. Louis	All-rail: West	Through	Via Gulf
Boston, Mass.	61½	101½	163	132
Burlington, Vt.	58½	101½	160	132
Glen Falls, N. Y.	58½	101½	160	132
Lowell, Mass.	60½	101½	162	132
New London, Conn.	58½	101½	160	132
New York	61½	101½	163	132
	(W. S. Curlett I. C. C. A-59.)	(F. A. Leland 15K I. C. C. 1448.)		(F. A. Leland 91 I. C. C. 1400.)

First-class to Oklahoma City—Continued

Paper Newsprint—Carload

From—	All-rail		Through	Via Gulf
	To St. Louis	West		
Boston, Mass	54	84½	138½	115½
Burlington, Vt	51	84½	135½	115½
Glen Falls, N. Y	51	84½	135½	115½
Lowell, Mass	51	84½	135½	115½
New London, Conn	51	84½	135½	115½
New York, N. Y	61½	84½	146	115½
	(W. S. Curlett I. C. C. A-59.)	(F. A. Leland 15K I. C. C. 1448.)		(F. A. Leland 91 I. C. C. 1400.)

Soda, Bicarbonate of—Carloads

From—	All-rail		Through	Via Gulf
	To St. Louis	West		
Boston, Mass	54	90	144	120
Burlington, Vt	52	90	142	120
Lowell, Mass	53	90	143	120
New London, Conn	52	90	141	120
New York, N. Y	54	90	144	120
	(W. S. Curlett I. C. C. A-59.)	(F. A. Leland 15K I. C. C. 1448.)		(F. A. Leland 91 I. C. C. 1400.)

From—	All-rail		Through	Via Gulf
	To St. Louis	West		
Boston, Mass	54	90	144	120
Burlington, Vt	52	90	143	120
Lowell, Mass	53	90	143	120
New London, Conn	52	90	141	120
New York, N. Y	54	90	144	120
	(W. S. Curlett I. C. C. A-59.)	(F. A. Leland 15K I. C. C. 1448.)		(F. A. Leland 91 I. C. C. 1400.)

First-class to Oklahoma City—Continued

[fol. 166]

Starch—Carloads

From—	All-rail		Through	Via Gulf
	To St. Louis	West		
Boston, Mass	57½	91	148½	123½
Burlington, Vt	55½	91	148½	123½
Lowell, Mass	56½	91	147½	123½
New London, Conn	55½	91	146½	123½
New York, N. Y	57½	91	148½	123½
	(W. S. Curlett I. C. C. A-59.)	(F. A. Leland's 15K I. C. C. 1448.)		(F. A. Leland's 91 I. C. C. 1400.)

Rates from Oklahoma Points, All Rail, Compared with Rates on the Same Commodities via Gulf

St. L. S. F. Tariff 381-D, I. C. C. 7511—Wall Plaster—Carloads Southard, Okla., to New York, 42 cents via Gulf, 49½ cents all rail.

Leland's Tariff 9-I, I. C. C. 1400, Item 1832—Asphalt Ardmore, Okla., to New York, $8.40 per Ton, 2,000 pounds via all rail, via Gulf, 86½ cents per cwt.

The all-rail rate on the above from Ardmore to New York, 86½ cents, is made up of 48 cents Ardmore to Porter, Ind., Leland's I. C. C. 1515, plus 38½ cents Porter, Ind., to New York, per Kelley's I. C. C. 1107.

Leland's Tariff 9-I, I. C. C. 1400, Itm 1856 makes rate on second-hand books, minimum weight 24,000 pounds, Oklahoma City to Boston, etc., $1.28½ via Gulf.

The all-rail rate on old books Oklahoma City to Boston is $2.91, which is the third-class rate, made combination on Chicago as follows:

Oklahoma City to Chicago, $1.81 per hundred pounds Leland's I. C. C. 1448, plus $1.10 Chicago to Boston, Kelley's I. C. C. 1100.

Exhibit No. 9 in Evidence

Comparative statement showing average rates on cotton compressed in transit at carrier's expense from points in Oklahoma to New York and other representative consuming points in Atlantic seaboard territory via Gulf through Galveston, Texas, as compared with the rates via all rail; also a comparison of the revenue per ton-mile via the respective routes, Gulf and all rail.

Have also shown the average rates as proposed by the Complainants via the Gulf Route as well as the average revenue per ton-mile under the proposed rates via Gulf.

From Oklahoma

	Via Gulf through Galveston, Texas					Via all rail through St. Louis		
To—	Average dist., miles	Present rates, average, cts. cwt.	Revenue per ton-mile, cts. cwt.	Proposed rates	Revenue per ton-mile, cts. cwt.	Average dist., miles	Average rates, cts. cwt.	Revenue per ton-mile, cts. cwt.
New York, N. Y.	1,220	164.2	26.9	160.1	26.3	1,622	165.2	20.4
Albany, N. Y.	1,362	196.1	28.8	154.2	22.6	1,584	158.2	20
Baltimore, Md.	1,408	202.2	28	158.1	22.5	1,489	162.1	21.8
Philadelphia, Pa.	1,312	189.2	28.9	159.1	24.2	1,516	163.1	21.5
Boston, Mass.	1,453	190.7	26.2	164.3	22.6	1,784	168.3	18.9
Lowell, Mass.	1,479	205.7	27.8	164.3	22.2	1,805	168.3	18.6

[fol. 168]

EXHIBIT No. 10 IN EVIDENCE

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

versus

THE ARCADE AND ATTICA RAILROAD CORPORATION et al.

Mileage from Compress Points on C., R. I. & P. to Junction Points (1), (2), (3), (4), Where Traffic Leaves C., R. I. & P. Rails Destined Galveston, Tex., as Compared with Distances to St. Louis, Chicago, Kansas City, and Memphis.

From—	To—	(1) Ft. Worth, Tex.	(2) Dallas, Tex.	(3) Randolph, Okla.	(4) Coal-gate, Okla.	Kansas City, Mo.	St. Louis, Mo.	Chicago, Ill.	Memphis, Tenn.
Ardmore	Okla.....	.....	.....	27.4	74.4	655.8	956.7	1,172.2	470.7
Chickasha	"	176.2	209	....	....	413.5	714.4	929.9	545.6
Guthrie	"	267.7	300.5	....	....	390.8	691.7	907.2	571.7
Hobart	"	243.5	276.3	....	....	485	785.9	1,001.4	617.1
Holdenville	"	211.5	344.3	....	....	483.4	784.3	999.8	410.3
Lawton	"	154.6	187.4	....	....	466.5	767.4	982.9	598.6
Mangum	"	268.7	301.5	....	....	510.2	811.1	1,026.6	642.3
McAlester	"	355.6	388.4	....	....	527.5	828.4	1,043.9	366.4
Okla. City	"	235.3	268.1	....	....	407.2	708.1	923.6	486.5
Shawnee	"	273.2	306	....	....	445.1	746	961.5	448.6
Waurika	"	112.4	145.2	....	....	477.3	778.2	993.7	609.4

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

versus

THE ARCADE AND ATTICA RAILROAD CORPORATION et al.

Rates on Cotton, Carriers' Cost of Compression from Oklahoma and Texas Points to St. Louis, Missouri, and Galveston, Texas (See Note)

	From—					
To—	Ardmore, Okla., Waurika, Okla.	Chickasha, Okla., Guthrie, Okla., Holdenville, Okla., Lawton, Okla., McAlester, Okla., Okla. City, Okla., Shawnee, Okla.	Elk City, Hobart, Mangum, Okla.	Amarillo, Texas	Ft. Worth, Texas	Sherman, Texas
St. Louis, Mo.....	115	115	118	122	119	119
Galveston, Tex.....	102½	115	121½	102½	89	89

Tariff reference:

Southwestern Lines' No. 80-N. F. A. Leland's I. C. C. 1467.
Southwestern Lines' No. 43-N. F. A. Leland's I. C. C. 1487.
Texas Lines Tariff 17-C. A. C. Fonda's I. C. C. 110.

NOTE.—Rates shown do not include 10% reduction effective January 1st, 1922.

[fol. 170] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

versus

THE ARCADE AND ATTICA RAILROAD CORPORATION et al.

Rates on Compressed Cotton from St. Louis, Missouri, and Galveston, Texas, to Eastern Seaboard Territory (See Note)

To—	From— St. Louis, Mo. (all-rail rates), any quantity rates	From— Galveston, Texas (rail and ocean rate) Carload rates minimum weight 20,000 lbs.	From— Galveston, Texas (rail and ocean rate) Less carload rates
Hamilton, Ont.	65	106	111½
Montreal, P. Q.	65	103	112
Boston, Mass.	79	76½	76½
Fall River "	79	88½	90
Dover, N. H.	79	98½	100½
Providence, R. I.	79	88½	90
Bennington, Vt.	79	96	99½
Rockland, Me.	79	...	...
Hartford, Conn.	79	84½	86
Philadelphia, Pa.	73	75	84
Millville, N. J.	73	85½	94½

New York, N. Y.	75	50–(1) 25	50–(1) 25
Albany, "	68	80	87
Baltimore, Md.	72	88	97
Cumberland, "	70½	...	...

Tariff reference:

W. J. Kelly's 218-A I. C. C. 848.
W. J. Kelly's 400-E I. C. C. 111.
Wm. J. Sedgman 17-H I. C. C. 135.

(1) Applies only on export traffic (except when destined to points in Dominion of Canada) moving on thru B/L.

NOTE.—Rates shown do not include 10% reduction effective January 1st, 1922.

[fol. 171] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

versus

THE ARCADE AND ATTICA RAILROAD CORPORATION et al.

Rates on Cotton, Any Quantity, Carriers' Cost of Compression from Texas Points via Rail and Water, as Compared with Rates from Oklahoma Points via All Rail

	From—			
	Rail & water thru Galveston, Tex.		All rail	
To—	Amarillo, Tex. (1)	Dallas, Tex., Sherman, Tex. (1)	Ardmore, Okla.	Chickasha, Okla., Oklahoma City, Okla.
Hamilton, Ont.	166	152½	156½	156½
Montreal, P. Q.	174	160½	164½	164½
Boston, Mass.	179	165½	170½	170½
Fall River "	179	165½	170½	170½
Dover, N. H.	179	165½	170½	170½
Providence, R. I.	179	165½	170½	170½
Bennington, Vt.	179	165½	170½	170½
Rockland, Me.	183	169½	170½	170½

Hartford, Conn.	179	169½	170½	170½
Philadelphia, Pa.	174	160½	164½	164½
Millville, N. J.	183	169½	173½	173½
New York, N. Y.	176	163½	166½	166½
Albany, "	169	155½	159½	159%
Baltimore, Md.	173	159½	163½	163½
Cumberland, "	171½	158	163½	163½

Tariff reference:

Southwestern Lines 43-N F. A. Leland's I. C. C. 1487.
Southwestern Lines 80-E F. A. Leland's I. C. C. 1467.

(1) Rates do not apply via Rock Island Lines.

[fol. 172] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

versus

THE ARCADE AND ATTICA RAILROAD CORPORATION et al.

Rates on Cotton, Carriers' Cost of Compression, from Compress Points on C. R. I. & P. Railway to Eastern Seaboard Points via All Rail and Rail and Water, with Difference in Rates (See Note)

From Chickasha, Okla., Guthrie, Okla., Holdenville, Okla., Lawton, Okla., McAlester, Okla., Oklahoma City, Okla., Shawnee. Okla., to—	Rates via all rail		Rates via rail and water thru Galveston, based on combination of locals		Difference in rates. Except as noted the following differences are in favor of all-rail rates	
	Carload	Less carloads	Carloads (1)	Less carload	Carloads	Less carloads
Hamilton, Ont.	156½	156½	221	226½	64½	70
Montreal, P. Q.	164½	164½	218	227	53½	62½
Boston, Mass.	170½	170½	191½	191½	21	21
Fall River "	170½	170½	203½	205	33	34½
Dover, N. H.	170½	170½	213½	215½	43	45
Providence, R. I.	170½	170½	203½	205	33	35½
Bennington, Vt.	170½	170½	211	214½	40½	44
Rockland, Me.	170½	170½	...	...	..	..

Hartford, Conn.	170½	170½	199½	201	29	30½
Philadelphia, Pa.	164½	164½	190	199	25½	34½
Millville, N. J.	173½	173½	200½	209½	27	36
New York, N. Y.	166½	166½	165	165	X1½	X1½
Albany, "	159½	159½	195	202	35½	42½
Baltimore, Md.	163½	163½	203	212	39½	48½
Cumberland, "	163½	163½	...	...	..	..

Tariff Reference:

Southwestern Lines' 80-E F. A. Leland's I. C. C. 1467.
Wm. J. Sedgman's 17-H I. C. C. 135.
(1) Subject to Minimum weight of 20,000 Lbs. beyond Galveston, Tex.
X Less than all rail rate.
NOTE—Rates shown do not include 10% reduction effective January 1st, 1922.

[fol. 173] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

versus

THE ARCADE AND ATTICA RAILROAD CORPORATION et al.

Rates on Cotton, Carriers' Cost of Compression, from Compress Points on C. R. I. & P. Railway to Eastern Seaboard Points via All Rail and Rail and Water, with Difference in Rates (See Note)

From Ardmore, Okla., Waurika, Okla., to—	Rates via all rail		Rates via rail and water thru Galveston, based on combination of locals		Difference in rates. Except as noted the following differences are in favor of all-rail rates	
	Carload	Less carloads	Carloads (1)	Less carload	Carloads	Less carloads
Hamilton, Ont.	156½	156½	208½	214	52	57½
Montreal, P. Q.	164½	164½	205½	214½	41	50
Boston, Mass.	170½	170½	180	180	9½	9½
Fall River, "	170½	170½	191	192½	20½	22
Dover, N. H.	170½	170½	201	203	30½	32½
Providence, R. I.	170½	170½	191	192½	20½	22
Bennington, Vt.	170½	170½	198½	202½	28	32
Rockland, Me.	170½	170½	...	...	..	..

Hartford, Conn.	170½	170½	187	188½	26½	18
Philadelphia, Pa.	164½	164½	177½	186½	13	22
Millville, N. J.	173½	173½	188	197	14½	23½
New York, N. Y.	166½	166½	152½	152½	X14	X14
Albany, "	159½	159½	182½	189½	23	30
Baltimore, Md.	163½	163½	190½	199½	27	36
Cumberland, "	163½	163½	...	...	..	..

Tariff Reference:

Southwestern Lines' 80-E F. A. Leland's I. C. C. 1467.
Wm. J. Sedgman's 17-H I. C. C. 135.
(1) Subject to minimum weight of 20,000 pounds beyond Galveston, Texas.
X Less than all rail rate.
NOTE—Rates shown do not include 10% reduction effective January 1st, 1922.

[fol. 174] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

versus

THE ARCADE AND ATTICA RAILROAD CORPORATION et al.

Rates on Cotton, Carriers' Cost of Compression, from Compress Points on C. R. I. & P. Railway to Eastern Seaboard Points via All Rail and Rail and Water, with Difference in Rates (See Note)

From Elk City, Okla., Hobart, Okla., Mangum, Okla., to—	Rates via all rail		Rates via rail and water thru Galveston, based on combination of locals		Difference in rates. Except as noted the following differences are in favor of all-rail rates	
	Carload	Less carloads	Carloads (1)	Less carload	Carloads	Less carloads
Hamilton, Ont.	159½	159½	227½	233	68	73½
Montreal, P. Q.	167½	167½	224½	233½	57	66
Boston, Mass.	173½	173½	198	198	24½	24½
Fall River, "	173½	173½	210	211½	36½	38
Dover, N. H.	173½	173½	220	222	46½	46½
Providence, R. I.	173½	173½	210	211½	36½	38
Bennington, Vt.	173½	173½	217½	221	44	47½
Rockland, Me.	173½	173½	...	...	..	..

Hartford, Conn.	173½	173½	206	207½	32½	34
Philadelphia, Pa.	167½	167½	196½	205½	29	38
Millville, N. J.	176½	176½	207	216	39½	39½
New York, N. Y.	169½	169½	171½	171½	X2	X2
Albany, "	162½	162½	201½	208½	39	46
Baltimore, Md.	166½	166½	209½	218½	47	52
Cumberland, "	166½	166½	...	...	..	..

Tariff Reference:

Southwestern Lines' 80-E F. A. Leland's I. C. C. 1467.
Wm. J. Sedgman's 17-H I. C. C. 135.
(1) Subject to Minimum weight of 20,000 Lbs. beyond Galveston, Tex.
X Less than all rail rate.
NOTE—Rates shown do not include 10% reduction effective January 1st, 1922.

[fol. 175] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

versus

THE ARCADE AND ATTICA RAILROAD CORPORATION et al.

Rates on Cotton, any Quantity, Carrier's Cost of Compression from Compress Points, on C., R. I. & P. to Eastern Seaboard Points via All Rail, Rail and Water, and Difference in Rates (See Note.)

From Little Rock, Ark., to—	Rates via all rail	Rail and water rates via Memphis and Atlantic ports	Difference
Hamilton, Ont.,	118½	.....	.....
Montreal, P. Q.	125	.....	.....
Boston, Mass.	134½	134½	.....
Fall River, Mass.	134½	.....	.....
Dover, N. H.	134½	.....	.....
Providence, R. I.	134½	134½	.....
Bennington, Vt.	134½	.....	.....
Rockland, Me.	134½	.....	.....
Hartford, Conn.	134½	.....	.....
Philadelphia, Pa.	125	125	.....
Millville, N. J.	132	.....	.....
New York, N. Y.	128	128	.....
Albany, N. Y.	121	.....	.....
Baltimore, Md.	124	124	.....
Cumberland, Md.	124	.....	.....

Tariff Reference:

C., R. I. & P. 25600-J. I. C. C. C-10635.

NOTE.—Rates shown do not include 10% reduction effective January 1st, 1922.

[fol. 176] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

versus

THE ARCADE AND ATTICA RAILROAD CORPORATION et al.

Rates on Cotton, any Quantity, Carrier's Cost of Compression from Compress Points, on C., R. I. & P. to Eastern Seaboard Points via All Rail, Rail and Water, and Difference in Rates (See Note.)

From Camden, Ark., El Dorado, Ark., to—	Rates via all rail	Rail and water rates via Memphis and Atlantic ports	Difference
Hamilton, Ont.	125½	.....	.....
Montreal, P. Q.	132	.....	.....
Boston, Mass.	141½	141½	.....
Fall River, Mass.	141½	.....	.....
Dover, N. H.	141½	.....	.....
Providence, R. I.	141½	141½	.....
Bennington, Vt.	141½	.....	.....
Rockland, Me.	141½	.....	.....
Hartford, Conn.	141½	.....	.....
Philadelphia, Pa.	132	132	.....
Millville, N. J.	139	.....	.....
New York, N. Y.	135	135	.....
Albany, N. Y.	128	.....	.....
Baltimore, Md.	131	131	.....
Cumberland, Md.	131	.....	.....

Tariff Reference:

C., R. I. & P. No. 25600-J. I. C. C-10635.

NOTE.—Rates shown do not include 10% reduction effective January 1st, 1922.

[fol. 177] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

versus

THE ARCADE AND ATTICA RAILROAD CORPORATION et al.

Rates on Cotton, any Quantity, Carrier's Cost of Compression from Compress Points, on C., R. I. & P. to Eastern Seaboard Points via All Rail, Rail and Water, and Difference in Rates (See Note.)

From Forrest City, Ark., Cotton Plant, Ark., Newport, Ark., to—	Rates via all rail	Rail and water rates via Memphis and Atlantic ports	Difference
Hamilton, Ont.	112	.....	.....
Montreal, P. Q.	119½	.....	.....
Boston, Mass.	128	128	.....
Fall River, Mass.	128	.....	.....
Dover, N. H.	128	.....	.....
Providence, R. I.	128	128	.....
Bennington, Vt.	128	.....	.....
Rockland, Me.	128	.....	.....
Hartford, Conn.	128	.....	.....
Philadelphia, Pa.	118½	118½	.....
Millville, N. J.	125½	.....	.....
New York, N. Y.	121½	121½	.....
Albany, N. Y.	114½	.....	.....
Baltimore, Md.	117½	117½	.....
Cumberland, Md.	117½	.....	.....

Tariff Reference:

C., R. I. & P. No. 25600-J. I. C. C. C-10635.

NOTE.—Rates shown do not include 10% reduction effective January 1st, 1922.

[fol. 178] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

versus

THE ARCADE AND ATTICA RAILROAD CORPORATION et al.

Rates on Cotton, any Quantity, Carrier's Cost of Compression from Compress Points, on C., R. I. & P. to Eastern Seaboard Points via All Rail, Rail and Water, and Difference in Rates (See Note.)

From Ruston, La., Alexandria, La., to—	Rates via all rail	Rail and water rates via Memphis and Atlantic ports	Difference
Hamilton, Ont.	126	.....	.....
Montreal, P. Q.	132½	.....	.....
Boston, Mass.	142	142	.....
Fall River, Mass.	142	.....	.....
Dover, N. H.	142	.....	.....
Providence, R. I.	142	142	.....
Bennington, Vt.	142	.....	.....
Rockland, Me.	142	.....	.....
Hartford, Conn.	142	.....	.....
Philadelphia, Pa.	132½	132½	.....
Milleville, N. J.	139½	.....	.....
New York, N. Y.	135½	135½	.....
Albany, N. Y.	128½	.....	.....
Baltimore, Md.	131½	131½	.....
Cumberland, Md.	131½	.....	.....

Tariff Reference:

C., R. I. & P. No. 25600-J. I. C. C. C-10635.

NOTE.—Rates shown do not include 10% reduction effective January 1st, 1922.

[fol. 179]

EXHIBIT No. 11 IN EVIDENCE

Witness: Strupper

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

vs.

ARCADE AND ATTICA RAILROAD CORPORATION et al.

Statement Showing Rates on Cotton from Oklahoma Points to Galveston; Also to New York via Galveston, with Short-line Distance to Galveston via Frisco and Connections

From—		Dis., Galveston.	Rate to Galveston.	Rate, Gal. to N. York.	Thru.	Route.
Madill,	Okla.....	395	1.045	50	1.545	Fco., Denison, thence short line.
Randolph,	"	403	1.045	50	1.545	" " " "
Ada,	"	450	1.15	50	1.65	" " " "
Weleetka,	"	504	1.15	50	1.65	" " " "
Vinita,	"	628	1.15	50	1.65	" " " "
Durant,	"	389	1.045	50	1.545	" " " "
Boswell,	"	419	1.045	50	1.545	" " " "
Hugo,	"	399	1.04	50	1.54	" Paris, " "
Ft. Towson,	"	414	1.04	50	1.54	" " " "
Idabel,	"	442	1.04	50	1.54	" " " "
	"	474	1.105	50	1.605	" " " "

Boynton,	"	.....	550	1.15	50	1.65	"	Denison,	"	"
Muskogee,	"	.....	569	1.15	50	1.65	"	"	"	"
Westville,	"	.....	635	1.15	50	1.65	"	Paris,	"	"
Davenport,	"	.....	609	1.15	50	1.65	"	Denison,	"	"
Okla. City,	"	.....	639	1.15	50	1.65	"	Vernon,	"	"
Tuttle,	"	.....	580	1.15	50	1.65	"	"	"	"
Fletcher,	"	.....	568	1.215	50	1.715	"	"	"	"
Lawton,	"	.....	548	1.15	50	1.65	"	"	"	"
Indiahoma,	"	.....	527	1.215	50	1.715	"	"	"	"
Snyder,	"	.....	514	1.215	50	1.715	"	"	"	"
Cold Springs,	"	.....	524	1.215	50	1.715	"	"	"	"
Hobart,	"	.....	532	1.215	50	1.715	"	"	"	"
Thomas,	"	.....	600	1.215	50	1.715	"	"	"	"
Enid,	"	.....	673	1.215	50	1.715	"	"	"	"

Tariff reference:

To Galveston S. W. L. Tariff 80-E, Leland's I. C. C. 1467.
Galveston to New York, Seaboard Tariff 17-H, Sedgman's I. C. C. C-135.
Texas Lines Mileage Circular 1-B, Fonda's I. C. C. 70.
S. L.-S. F. Tariff 1259-D, I. C. C. 7543.

[fol. 180] EXHIBIT NO. 12 IN EVIDENCE

Witness: Strupper

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

vs.

ARCADE & ATTICA RAILROAD CORPORATION et al.

Statement Showing Rates on Cotton from Oklahoma Points to St. Louis; Also New York via St. Louis, Showing Distance to St. Louis via Frisco

From—	Dist. to St. Louis.	Rate to St. Louis.	Beyond.	Through.
Madill, Okla.	603	1.15	51½	1.665
Randolph, Okla.	596	1.15	51½	1.665
Ada, Okla.	549	1.15	51½	1.665
Welcetka, Okla.	495	1.15	51½	1.665
Vinita, Okla.	360	1.08	51½	1.595
Durant, Okla.	611	1.15	51½	1.665
Boswell, Okla.	580	1.15	51½	1.665
Hugo, Okla.	559	1.15	51½	1.665
Fort Towson, Okla.	575	1.15	51½	1.665
Idabell, Okla.	603	1.15	51½	1.665
Talihina, Okla.	484	1.10½	51½	1.62
Boynton, Okla.	476	1.12	51½	1.635
Muskogee, Okla.	457	1.08	51½	1.595
Westville, Okla.	385	1.01½	51½	1.53
Davenport, Okla.	486	1.15	51½	1.665
Oklahoma City, Okla.	543	1.15	51½	1.665
Tuttle, Okla	563	1.15	51½	1.665
Fletcher, Okla.	611	1.15	51½	1.665
Lawton, Okla.	631	1.15	51½	1.665
Indiahoma, Okla.	653	1.15	51½	1.665
Snyder, Okla.	665	1.15	51½	1.665
Cold Springs, Okla.	675	1.18	51½	1.695
Hobart, Okla.	677	1.18	51½	1.695
Thomas, Okla.	618	1.18	51½	1.695
Enid, Okla.	545	1.15	51½	1.665

Tariff:

S. W. D. 80-E, Leland's I. C. C. 1467.
S. L.-S. F. Tariff 1259-D, I. C. C. 7543.

[fol. 180a]

EXHIBIT No. 13 IN EVIDENCE

Witness: Strupper

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

vs.

ARCADE & ATTICA RAILROAD CORPORATION et al.

Statement Showing Rates on Cotton from Oklahoma Points to New England Points via Galveston

From—	Cambridge, Mass.		Bristol, Conn.		Bristol, N. H.		Gloucester, Mass.		Hamilton, Ont.	
	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.
Madill	1.81	1.81	1.97	1.88	2.10	2.03	2.09½	2.01½	2.16	2.10½
Randolph	1.81	1.81	1.97	1.88	2.10	2.03	2.09½	2.01½	2.16	2.10½
Ada	1.91½	1.91½	2.07½	1.98½	2.20½	2.13½	2.20	2.12	2.26½	2.21
Weleetka	1.91½	1.91½	2.07½	1.98½	2.20½	2.13½	2.20	2.12	2.26½	2.21
Vinita	1.91½	1.91½	2.07½	1.98½	2.20½	2.13½	2.20	2.12	2.26½	2.21
Durant	1.81	1.81	1.97	1.88	2.10	2.03	2.09½	2.01½	2.16	2.10½
Boswell	1.81	1.81	1.97	1.88	2.10	2.03	2.09½	2.01½	2.16	2.10½
Hugo	1.80½	1.80½	1.96½	1.87½	2.09½	1.87½	2.09	2.01	2.15½	2.10
Ft. Towson	1.80½	1.80½	1.96½	1.87½	2.09½	1.87½	2.09	2.01	2.15½	2.10
Idabel	1.80½	1.80½	1.96½	1.87½	2.09½	1.87½	2.09	2.01	2.15½	2.10
Talihina	1.87	1.87	2.03	1.94	2.16	2.09	2.15½	2.09½	2.22	2.16½

Statement Showing Rates on Cotton from Oklahoma Points to New England Points via Galveston—Continued

From—	Cambridge, Mass.		Bristol, Conn.		Bristol, N. H.		Gloucester, Mass.		Hamilton, Ont.	
	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.
Boynton	1.91½	1.91½	2.07½	1.98½	2.20½	2.13½	2.20	2.12	2.26½	2.21
Muskogee	1.91½	1.91½	2.07½	1.98½	2.20½	2.13½	2.20	2.12	2.26½	2.21
Westville	1.91½	1.91½	2.07½	1.98½	2.20½	2.13½	2.20	2.12	2.26½	2.21
Davenport	1.91½	1.91½	2.07½	1.98½	2.20½	2.13½	2.20	2.12	2.26½	2.21
Okla. City	1.91½	1.91½	2.07½	1.98½	2.20½	2.13½	2.20	2.12	2.26½	2.21
Tuttle	1.91½	1.91½	2.07½	1.98½	2.20½	2.13½	2.20	2.12	2.26½	2.21
Fletcher	1.98	1.98	2.14	2.05	2.27	2.20	2.26½	2.18½	2.33	2.27½
Lawton	1.91½	1.91½	2.07½	1.98½	2.20½	2.13½	2.20	2.12	2.26½	2.21
Indiahoma	1.98	1.98	2.14	2.05	2.27	2.20	2.26½	2.18½	2.33	2.27½
Snyder	1.98	1.98	2.14	2.05	2.27	2.20	2.26½	2.18½	2.33	2.27½
Cold Spgs.	1.98	1.98	2.14	2.05	2.27	2.20	2.26½	2.18½	2.33	2.27½
Hobart	1.98	1.98	2.14	2.05	2.27	2.20	2.26½	2.18½	2.33	2.27½
Thomas	1.98	1.98	2.14	2.05	2.27	2.20	2.26½	2.18½	2.33	2.27½
Enid	1.98	1.98	2.14	2.05	2.27	2.20	2.26½	2.18½	2.33	2.27½

[fol. 181]

From—	Lewiston, Maine.		Melville, N. J.		Newport, N. H.		Providence, R. I.		Utica, N. Y.	
	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.
Madill	2.06½	2.06	1.99	1.90	2.05	1.97	1.94½	1.93	1.99	1.90
Randolph	2.06½	2.06	1.99	1.90	2.05	1.97	1.94½	1.93	1.99	1.90
Ada	2.17	2.16½	2.09½	2.00½	2.15½	2.07½	2.05	2.03½	2.09½	2.00½
Weleetka	2.17	2.16½	2.09½	2.00½	2.15½	2.07½	2.05	2.03½	2.09½	2.00½
Vinita	2.17	2.16½	2.09½	2.00½	2.15½	2.07½	2.05	2.03½	2.09½	2.00½
Durant	2.06½	2.06	1.99	1.90	2.05	1.97	1.94½	1.93	1.99	1.90
Boswell	2.06½	2.06	1.99	1.90	2.05	1.97	1.94½	1.93	1.99	1.90
Hugo	2.06	2.05½	1.98½	1.89½	2.04½	1.96½	1.94	1.92½	1.98½	1.89½
Ft. Towsen	2.06	2.05½	1.98½	1.89½	2.04½	1.96½	1.94	1.92½	1.98½	1.89½
Idabel	2.06	2.05½	1.98½	1.89½	2.04½	1.96½	1.94	1.92½	1.98½	1.89½
Talihina	2.12½	2.12	2.05	1.96	2.11	2.03	2.00½	1.89	2.05	1.96
Boynton	2.17	2.16½	2.09½	2.00½	2.15½	2.07½	2.05	2.03½	2.09½	2.00½
Muskogee	2.17	2.16½	2.09½	2.00½	2.15½	2.07½	2.05	2.03½	2.09½	2.00½
Westville	2.17	2.16½	2.09½	2.00½	2.15½	2.07½	2.05	2.03½	2.09½	2.00½
Davenport	2.17	2.16½	2.09½	2.00½	2.15½	2.07½	2.05	2.03½	2.09½	2.00½
Okla. City	2.17	2.16½	2.09½	2.00½	2.15½	2.07½	2.05	2.03½	2.09½	2.00½
Tuttle	2.17	2.16½	2.09½	2.00½	2.15½	2.07½	2.05	2.03½	2.09½	2.00½
Fletcher	2.23½	2.23	2.16	2.07	2.22	2.14	2.11½	2.10	2.16	2.07
Lawton	2.17	2.16½	2.09½	2.00½	2.15½	2.07½	2.05	2.03½	2.09½	2.00½
Indiahoma	2.23½	2.23	2.16	2.00½	2.22	2.14	2.11½	2.10	2.16	2.07
Snyder	2.23½	2.23	2.16	2.00½	2.22	2.14	2.11½	2.10	2.16	2.07
Cold Spgs	2.23½	2.23	2.16	2.00½	2.22	2.14	2.11½	2.10	2.16	2.07
Hobart	2.23½	2.23	2.16	2.00½	2.22	2.14	2.11½	2.10	2.16	2.07
Thomas	2.23½	2.23	2.16	2.00½	2.22	2.14	2.11½	2.10	2.16	2.07
Enid	2.23½	2.23	2.16	2.00½	2.22	2.14	2.11½	2.10	2.16	2.07

Statement Showing Rates on Cotton from Oklahoma Points to New England Points via Galveston—Continued

[fol. 182]

From—	Wilkes-Barre, Pa.		Woodberry, Md.		Syracuse, N. Y.		Waterville, Me.		Winchester, N. H.	
	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.
Madill	1.99	1.90	2.01½	1.92½	2.01½	1.92½	2.10½	2.10	2.05½	1.96½
Randolph	1.99	1.90	2.01½	1.92½	2.01½	1.92½	2.10½	2.10	2.05½	1.96½
Ada	2.09½	2.00½	2.12	2.03	2.12	2.03	2.21	2.20½	2.16	2.07
Weleetka	2.09½	2.00½	2.12	2.03	2.12	2.03	2.21	2.20½	2.16	2.07
Vinita	2.09½	2.00½	2.12	2.03	2.12	2.03	2.21	2.20½	2.16	2.07
Durant	1.99	1.90	2.01½	1.92½	2.01½	1.92½	2.10½	2.10	2.05½	1.96½
Boswell	1.99	1.90	2.01½	1.92½	2.01½	1.92½	2.10½	2.10	2.05½	1.96½
Hugo	1.98½	1.89½	2.01	1.92	2.01	1.92	2.10	2.09½	2.05	1.96
Ft. Towson	1.98½	1.89½	2.01	1.92	2.01	1.92	2.10	2.09½	2.05	1.96
Idabel	....	1.89½	2.01	1.92	2.01	1.92	2.10	2.09½	2.05	1.96
Talihina	2.05	1.96	2.07½	1.98½	2.07½	1.98½	2.16½	2.16	2.11½	2.02½
Boynton	2.09½	2.00½	2.12	2.03	2.12	2.03	2.21	2.20½	2.16	2.07
Muskogee	2.09½	2.00½	2.12	2.03	2.12	2.03	2.21	2.20½	2.16	2.07
Westville	2.09½	2.00½	2.12	2.03	2.12	2.03	2.21	2.20½	2.16	2.07
Davenport	2.09½	2.00½	2.12	2.03	2.12	2.03	2.21	2.20½	2.16	2.07
Okla. City	2.09½	2.00½	2.12	2.03	2.12	2.03	2.21	2.20½	2.16	2.07
Tuttle	2.09½	2.00½	2.12	2.03	2.12	2.03	2.21	2.20½	2.16	2.07
Fletcher	2.16	2.07	2.18½	2.09½	2.18½	2.09½	2.27½	2.27	2.22½	2.13½
Lawton	2.09½	2.00½	2.12	2.03	2.12	2.03	2.21	2.20½	2.16	2.07
Indiahoma	2.16	2.00½	2.18½	2.09½	2.18½	2.09½	2.21	2.20½	2.16	2.07
Snyder	2.16	2.00½	2.18½	2.09½	2.18½	2.09½	2.21	2.20½	2.16	2.07
Cold Spgs	2.16	2.00½	2.18½	2.09½	2.18½	2.09½	2.21	2.20½	2.16	2.07
Hobart	2.16	2.00½	2.18½	2.09½	2.18½	2.09½	2.21	2.20½	2.16	2.07
Thomas	2.16	2.00½	2.18½	2.09½	2.18½	2.09½	2.21	2.20½	2.16	2.07
Enid	2.16	2.00½	2.18½	2.09½	2.18½	2.09½	2.21	2.20½	2.16	2.07

[Vol. 1833]

From—	Buffalo, N. Y.		Bennington, Vt.		Montreal, P. Q.		St. Thomas, Ont.		Toronto, Ont.	
	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.
Madill	2.05	1.96	2.04	2.00½	2.12	2.07½	2.09½	2.04	2.09½	2.04
Randoph	2.05	1.96	2.04	2.00½	2.12	2.07½	2.09½	2.04	2.09½	2.04
Ada	2.19½	2.06½	2.14½	2.11	2.19½	2.18	2.20	2.14½	2.20	2.14½
Weleetka	2.19½	2.06½	2.14½	2.11	2.19½	2.18	2.20	2.14½	2.20	2.14½
Vinita	2.19½	2.06½	2.14½	2.11	2.19½	2.18	2.20	2.14½	2.20	2.14½
Durant	2.05	1.96	2.04	2.00½	2.12	2.07½	2.09½	2.04	2.09½	2.04
Boswell	2.05	1.96	2.04	2.00½	2.12	2.07½	2.09½	2.04	2.09½	2.04
Hugo	2.04½	1.95½	2.03½	2.00	2.11½	2.07	2.09	2.03½	2.09	2.03½
Ft. Towson	2.04½	1.95½	2.03½	2.00	2.11½	2.07	2.09	2.03½	2.09	2.03½
Idabel	2.04½	1.95½	2.03½	2.00	2.11½	2.07	2.09	2.03½	2.09	2.03½
Talihina	2.11	2.02	2.10	2.06½	2.18	2.13½	2.15½	2.10	2.15½	2.10
Boynton	2.15½	2.06½	2.14½	2.11	2.22½	2.18	2.20	2.14½	2.20	2.14½
Muskogee	2.15½	2.06½	2.14½	2.11	2.22½	2.18	2.20	2.14½	2.20	2.14½
Westville	2.15½	2.06½	2.14½	2.11	2.22½	2.18	2.20	2.14½	2.20	2.14½
Davenport	2.15½	2.06½	2.14½	2.11	2.22½	2.18	2.20	2.14½	2.20	2.14½
Okla. City	2.15½	2.06½	2.14½	2.11	2.22½	2.18	2.20	2.14½	2.20	2.14½
Tuttle	2.15½	2.06½	2.14½	2.11	2.22½	2.18	2.20	2.14½	2.20	2.14½
Fletcher	2.22	2.13	2.21	2.17½	2.29	2.24½	2.26½	2.21	2.26½	2.21
Lawton	2.15½	2.06½	2.14½	2.11	2.22½	2.18	2.20½	2.14½	2.20	2.14½
Indiahoma	2.22	2.13	2.21	2.11	2.29	2.18	2.26½	2.14½	2.26½	2.21
Snyder	2.22	2.13	2.21	2.11	2.29	2.18	2.26½	2.14½	2.26½	2.21
Cold Spgs.	2.22	2.13	2.21	2.11	2.29	2.18	2.26½	2.14½	2.26½	2.21
Hobart	2.22	2.13	2.21	2.11	2.29	2.18	2.26½	2.14½	2.26½	2.21
Thomas	2.22	2.13	2.21	2.11	2.29	2.18	2.26½	2.14½	2.26½	2.21
Enid	2.22	2.13	2.21	2.11	2.29	2.18	2.26½	2.11½	2.26½	2.21

Tariff Reference:

To Galveston S. W. L. Tariff 80-E, I. C. C. 1467. Beyond Galveston, Sedgman I. C. C. 135.

[fol. 184]

EXHIBIT No. 14 IN EVIDENCE

Witness: Strupper

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE—BOARD OF TRADE et al.

vs.

ARCADE & ATTICA RAILROAD CORPORATION et al.

Statement Showing Rates on Cotton from Oklahoma Points to New England Points Shown via St. Louis

From.	Cambridge, Mass.		Bristol, Conn.		Bristol, N. H.		Gloucester, Mass.		Hamilton, Ont.	
	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.
Madill, Okla.	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Randolph	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Ada	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Welectka	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Vinita	1.63½	1.63½	1.63½	1.63½	1.63½	1.63½	1.63½	1.63½	1.49½	1.49½
Durant	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Boswell	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Hugo	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Ft. Towson	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Idabel	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Talihina	1.66	1.66	1.66	1.66	1.66	1.66	1.66	1.66	1.52	1.52

Boynton	1.67½	1.67½	1.67½	1.67½	1.67½	1.67½	1.67½	1.67½	1.53½	1.53½
Muskogee	1.63½	1.63½	1.63½	1.63½	1.63½	1.63½	1.63½	1.62½	1.49½	1.49½
Westville	1.57	1.57	1.57	1.57	1.57	1.57	1.57	1.57	1.43	1.43
Davenport	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Okla. City	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Tuttle	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Fletcher	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Lawton	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Indiahoma	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Synder	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½
Cold Springs ...	1.73½	1.73½	1.73½	1.73½	1.73½	1.73½	1.73½	1.73½	1.59½	1.59½
Hobart	1.73½	1.73½	1.73½	1.73½	1.73½	1.73½	1.73½	1.73½	1.59½	1.59½
Thomas	1.73½	1.73½	1.73½	1.73½	1.73½	1.73½	1.73½	1.73½	1.59½	1.59½
Enid	1.70½	1 70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.56½	1.56½

Statement Showing Rates on Cotton from Oklahoma Points to New England Points Shown via St. Louis—Contd.

[fol. 185]

From.	Lewiston, Me.		Millville, N. J.		Newport, N. H.		Providence, R. I.		Utica, N. Y.	
	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.
Madill, Okla. ..	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Randolph	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Ada	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Weleetka	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Vinita	1.63½	1.63½	1.66½	1.66½	1.63½	1.63½	1.63½	1.63½	1.52½	1.52½
Durant	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Boswell	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Hugo	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Ft. Towson	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Idabel	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Talihina	1.66	1.66	1.69	1.69	1.66	1.66	1.66	1.66	1.55	1.55
Boynton	1.67½	1.67½	1.70½	1.70½	1.67½	1.67½	1.67½	1.67½	1.56½	1.56½
Muskogee	1.63½	1.63½	1.66½	1.66½	1.63½	1.63½	1.63½	1.63½	1.52½	1.52½
Westville	1.57	1.57	1.60	1.60	1.57	1.57	1.57	1.57	1.56	1.56
Davenport	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Okla. City	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Tuttle	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Fletcher	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Lawton	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Indiahoma	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Snyder	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½
Cold Sprgs.....	1.73½	1.73½	1.76½	1.76½	1.73½	1.73½	1.73½	1.73½	1.62½	1.62½
Hobart	1.73½	1.73½	1.76½	1.76½	1.73½	1.73½	1.73½	1.73½	1.62½	1.62½
Thomas	1.73½	1.73½	1.76½	1.76½	1.73½	1.73½	1.73½	1.73½	1.62½	1.62½
Enid	1.70½	1.70½	1.73½	1.73½	1.70½	1.70½	1.70½	1.70½	1.59½	1.59½

From.	Wilkes Barre, Pa.		Woodberry, Md.		Syracuse, N. Y.		Waterville, Me.		Winchester, N. H.	
	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.
Madill, Okla.	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Randolph	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Ada	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Welcetka	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Vinita	1.57½	1.57½	1.56½	1.56½	1.52½	1.52½	1.63½	1.63½	1.63½	1.63½
Durant	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Boswell	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Hugo	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Ft. Towson	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Idabel	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Talihina	1.60	1.60	1.58½	1.58½	1.55	1.55	1.66	1.66	1.66	1.66
Boynton	1.61½	1.61½	1.60½	1.60½	1.56½	1.56½	1.67½	1.67½	1.67½	1.67½
Muskogee	1.57½	1.57½	1.56½	1.56½	1.52½	1.52½	1.63½	1.63½	1.63½	1.63½
Westville	1.51	1.51	1.50	1.50	1.56	1.56	1.57	1.57	1.57	1.57
Davenport	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Okla. City	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Tuttle	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Fletcher	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Lawton	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Indiahoma	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Snyder	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½
Cold Sprgs.	1.67½	1.67½	1.66½	1.66½	1.62½	1.62½	1.73½	1.73½	1.73½	1.73½
Hobart	1.67½	1.67½	1.66½	1.66½	1.62½	1.62½	1.73½	1.73½	1.73½	1.73½
Thomas	1.67½	1.67½	1.66½	1.66½	1.62½	1.62½	1.73½	1.73½	1.73½	1.73½
Enid	1.64½	1.64½	1.63½	1.63½	1.59½	1.59½	1.70½	1.70½	1.70½	1.70½

Statement Showing Rates on Cotton from Oklahoma Points to New England Points Shown via St. Louis—Contd.

[fol. 187]

From.	Buffalo, N. Y.		Bennington, Vt.		Montreal, P. Q.		St. Thomas, Ont.		Toronto, Ont.	
	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.	A. Q.	C. L.
Madill, Okla.	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Randolph	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Ada	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Weleetka	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Vinita	1.49½	1.49½	1.63½	1.63½	1.57½	1.57½	1.49½	1.49½	1.52½	1.52½
Durant	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Boswell	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Hugo	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Ft. Towson	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Idabel	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Talihina	1.56½	1.56½	1.66	1.66	1.60	1.60	1.52	1.52	1.55	1.55
Boynton	1.52	1.52	1.67½	1.67½	1.61½	1.61½	1.53½	1.53½	1.56½	1.56½
Muskogee	1.53½	1.53½	1.63½	1.63½	1.57½	1.57½	1.49½	1.49½	1.52½	1.52½
Westville	1.49½	1.49½	1.57	1.57	1.51	1.51	1.43	1.43	1.46	1.46
Davenport	1.43	1.43	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Okla. City	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Tuttle	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Fletcher	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Lawton	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Indiahoma	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Synder	1.56½	1.56½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½
Cold Sprgs.	1.56½	1.56½	1.73½	1.73½	1.67½	1.67½	1.59½	1.59½	1.62½	1.62½
Hobart	1.59½	1.59½	1.73½	1.73½	1.67½	1.67½	1.59½	1.59½	1.62½	1.62½
Thomas	1.59½	1.59½	1.73½	1.73½	1.67½	1.67½	1.59½	1.59½	1.62½	1.62½
Enid	1.59½	1.59½	1.70½	1.70½	1.64½	1.64½	1.56½	1.56½	1.59½	1.59½

(1) Via all rail route. Tariff S. W. L. 80-E. F.

[fol. 188] EXHIBIT NO. 15 IN EVIDENCE

Witness: Strupper

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

vs.

ARCADE & ATTICA RAILROAD CORPORATION et al.

Statement Showing Mileage from New York and St. Louis to New England Points Shown

From New York to—	Miles.	Route.
Cambridge, Mass.	237	N. Y., N. H. & H., B. & A., B. & M.
Bristol, Conn ...	101	N. Y., N. H. & H.
Bristol, N. H. ..	266	N. Y., N. H. & H., B. & A., B. & M.
Gloucester, Mass..	266	N. Y., N. H. & H., B. & A., B. & M.
Hamilton, Ont...	501	N. Y. C., G. T.
Lewiston, Me....	407	N. Y., N. H. & H., B. & A., B. & M., Me. C.
Millville, N. J...	131	Pennsylvania Lines.
Newport, N. H...	350	N. Y., N. H. & H., B. & A., B. & M.
Providence, R. I.	188	N. Y., N. H. & H.
Utica, N. Y.	237	New York Central
Wilkes-Barre, Pa.	176	Lehigh Valley
Woodbury, Md...	189	B. & O., Penn. Lines.
Syracuse, N. Y....	287	D., L. & W.
Waterville, Me...	455	N. Y., N. H. & H., B. & A., B. & M., Me. C.
Winchester, N. H.	242	N. Y., N. H. & H., B. & A., B. & M.
Buffalo, N. Y....	440	New York Central
Bennington, Vt..	185	N. Y. C., Rutland.
Montreal, P. Q...	384	N. Y. C., D. & H.
St. Thomas, Ont.	579	N. Y. C., M. C.
Toronto, Ont. ...	540	N. Y. C., C. P.

Statement Showing Mileage from New York and St. Louis to New England Points Shown—Continued

[fol. 189]

From St. Louis to—	Miles.	Route.
Cambridge, Mass.	1,204	N. Y. C., Big Four, B. & M., W. S., B. & M.
Bristol, Conn. ...	1,153	Penn., N. Y., N. H. & H.
Bristol, N. H....	1,318	Penn., N. Y., N. H. & H., B. & A., B. & M.
Gloucester, Mass..	1,318	Penn., N. Y., N. H. & H., B. & A., B. & M.
Hamilton, Ont...	677	Wabash, Grand Trunk.
Lewiston, Me....	1,459	Penn., N. Y., N. H. & H., B. & A., B. & M., Me. C.
Millville, N. J...	1,003	Pennsylvania Lines.
Newport, N. H...	1,402	Penn., N. Y., N. H. & H., B. & A., B. & M
Providence, R. I.	1,240	Penn., N. Y., N. H. & H.
Utica, N. Y.....	920	N. Y. C., Big Four, N. Y. C.
Wilkes-Barre, Pa.	911	Pennsylvania.
Woodberry, Md. .	931	B. & O., Pennsylvania.
Syracuse, N. Y...	867	N. Y. C., Big Four, N. Y. C.
Waterville, Me...	1,507	Penn., N. Y., N. H. & H., B. & A., B. & M., Me. C.
Winchester, N. H.	1,294	Penn., N. Y., N. H. & H., B. & A., B. & M.
Buffalo, N. Y....	718	N. Y. C., Big Four.
Bennington, Vt...	1,096	N. Y. C., Big Four, N. Y. C., B. & A., Rutland.
Montreal, P. Q...	1,049	Wabash, Canadian Pacific.
St. Thomas, Ont.	597	Wabash.
Toronto, Ont....	715	Wabash, Canadian Pacific.

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EXHIBIT No. 16 IN EVIDENCE

Witness: Strupper

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

vs.

ARCADE & ATTICA RAILROAD CORPORATION et al.

Statement Showing Rates on Cotton From Texas Points to New York via Galveston, with Short-line Mileage to Galveston and Short-line Mileage via Reasonable Workable Routes

From—	Short line.	Rate.	Route.	Miles.
Dallas, Tex	290.5	1.34	Sou. Pac.	312.8
Ft. Worth	306.9	1.34	Sou. Pac.	333.4
Sherman	353.5	1.34	Sou. Pac.	375.8
Paris	373.7	1.34	Tex. Mid. Sou. Pac.	402.5
Greenville	328.4	1.34	Tex. Mid. Sou. Pac.	402.5
Vernon	469.4	1.34	F. W. D. C.-Sou. Pac.	497.6
Wichita Falls	420.2	1.34	F. W. D. C.-Sou. Pac.	448.3
Cleburne	288.6	1.34	Santa Fe	317.9
Weatherford	328.7	1.34	Santa Fe	357.6
Corsicana	235.4	1.34	T. & B. V.-Sou. Pac.	244.8
Waxahachie	266.2	1.34	T. & B. V.-Sou. Pac.	275.8
Terrell	296.1	1.34	Tex. Mid. Sp.	297.9
Stephenville	337.3	1.34	Cotton Belt Santa Fe	345.7
Waco	234.	1.34	M., K. & T. of Texas	243.2

Tariff Rates: S. W. L. Tariff 43 N. Lilands I. C. C. 1487.

Tariff Mileages: Texas lines mileage Circular 9-C A. C. Fondas I. C. C. 88 and Texas Lines Mileage Circular 1-D A. C. Fondas I. C. C. 70.

[fol. 191]

EXHIBIT No. 17 IN EVIDENCE

Witness: Strupper

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

vs.

ARCADE & ATTICA RAILROAD CORPORATION et al.

Statement Showing Rates on Cotton from Dallas, Ft. Worth, Sherman, Paris, Greenville, Vernon, Wichita Falls, Cleburne, Weatherford, Corsicana, Waxahachie, Terrell, Stephenville, Waco, Texas, to New England Points Shown via Galveston

To—	A. Q.	C. L.	To—	A. Q.	C. L.
Cambridge, Mass.	1.605	1.60	Wilkes-Barre, Pa.	(4) 1.665	(4) 1.615
Bristol, Conn.	1.625	1.60	Woodberry, Md.	(5) 1.68	(5) 1.625
Bristol, N. H.	(1) 1.735	(1) 1.705	Syracuse, N. Y.	(3) 1.68	(3) 1.625
Gloucester, Mass.	(1) 1.745	(1) 1.695	Waterville, Me.	(1) 1.74	(1) 1.735
Hamilton, Ont.	(2) 1.795	(2) 1.74	Winchester, N. H.	1.70	1.655
Lewiston, Me.	(1) 1.70	(1) 1.695	Buffalo, N. Y.	(2) 1.70	(2) 1.645
Millville, N. J.	1.665	1.615	Bennington, Vt.	(1) 1.685	(1) 1.675
Newport, N. H.	(1) 1.70	1.655	Montreal, P. Q.	(4) 1.80	(4) 1.743

Providence, R. I.....	1.655	1.645	St. Thomas, Ont.....	1.73	1.675
Utica, N. Y.....	(3) 1.665	(3) 1.615	Toronto, Ont.	(3) 1.73	(3) 1.675

C. L. Minimum: 20,000 pounds.

Tariff: S. W. L. Tariff 43-N, Leland's I. C. C. 1487.

From Dallas, Ft. Worth, Sherman, Paris, Greenville, Cleburne, Weatherford, Corsicana, Waxahachie, Terrell and Waco located on and via H. & T. C., M., K & T. of T., T. & P., G. C. & S. F., T. & B. V., T. M., I. & G. N. rate will be—

(1) 1.655.
(2) 1.525.
(3) 1.555.
(4) 1.605.
(5) 1.595.

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EXHIBIT No. 18 IN EVIDENCE

Witness: Strupper

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

vs.

ARCADE & ATTICA RAILROAD CORPORATION et al.

Statement Showing Rates on Cotton from Dallas, Ft. Worth, Sherman, Paris, Greenville, Wichita Falls, Cleburne, Weatherford, Corsicana, Waxahachie, Terrell, Stephenville, Waco, Texas, to New England Points Shown via All-rail

To—	A. Q.	C. L.	To—	A. Q.	C. L.
Cambridge, Mass.	1.745	1.745	Wilkes-Barre, Pa.	1.685	1.685
Bristol, Conn.	1.745	1.745	Woodberry, Md.	1.675	1.675
Bristol, N. H.	1.745	1.745	Syracuse, N. Y.	1.635	1.635
Gloucester, Mass.	1.745	1.745	Waterville, Me.	1.745	1.745
Hamilton, Ont.	1.605	1.605	Winchester, N. H.	.....	.....
Lewiston, Me.	1.745	1.745	Buffalo, N. Y.	1.605	1.605
Newport, N. H.	1.745	1.745	Bennington, Vt.	1.745	1.745
Providence, R. I.	1.745	1.745	Montreal, P. Q.	1.685	1.685
Utica, N. Y.	1.635	1.635	St. Thomas, Ont.	1.605	1.605
Millville, N. J.	1.775	1.775	Toronto, Ont.	1.635	1.635

From Vernon, Texas:

Cambridge, Mass.	1.81	1.81
Bristol, Conn.	1.81	1.81
Bristol, N. H.	1.81	1.81
Gloucester, Mass.	1.81	1.81
Hamilton, Ont.	1.67	1.67
Lewiston, Me.	1.81	1.81
Newport, N. H.	1.81	1.81
Providence, R. I.	1.81	1.81
Utica, N. Y.	1.70	1.70
Millville, N. J.	1.84	1.84
Wilkes-Barre, Pa.	1.75	1.75
Woodberry, Md.	1.74	1.74
Syracuse, N. Y.	1.70	1.70
Waterville, Me.	1.81	1.81
Winchester, N. H.	....	....
Buffalo, N. Y.	1.67	1.67
Bennington, Vt.	1.81	1.81
Montreal, P. Q.	1.75	1.75
St. Thomas, Ont.	1.67	1.67
Toronto, Ont.	1.70	1.70

Tariff reference S. W. L. Tariff 43-N, Leland's I. C. C. 1487.

[fol. 193]

EXHIBIT No. 19 IN EVIDENCE

Witness: Strupper

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

vs.

ARCADE & ATTICA RAILROAD CORPORATION et al.

Statement Showing Distance Texas Points Shown to St. Louis All-rail via Short Workable Route

From—	Miles.	Route.
Dallas, Texas	709	Mo. Pac.-T. & P.
Ft. Worth	740	Mo. Pac.-T. P.
Sherman	645	Frisco.
Paris	586	Frisco.
Greenville	637	Frisco-Tex. Mid.
Vernon	709	Frisco.
Wichita Falls	766	Frisco-Katy.
Cleburne	762	Mo. Pac.-T. P.-Santa Fe.
Weatherford	770	Mo. Pac.-T. P.
Corsicana	763	Frisco-So. Pac.
Waxahachie	751	Frisco-So. Pac.
Terrell	670	Frisco-Tex. Mid.
Stephenville	816	Frisco.
Waco	817	Cotton Belt.

[fol. 194] EXHIBIT No. 20 IN EVIDENCE

Witness: Strupper

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

vs.

ARCADE & ATTICA RAILROAD CORPORATION et al.

Statement Showing Rail Distance Oklahoma Points Shown to New England Points Shown via Galveston and Gulf; Also Same Origins and Destinations via St. Louis, All Rail.

Via Galveston

To..... From—	Cambridge, Mass. Miles.	Bristol, Conn. Miles.	Bristol, N. H. Miles.	Gloucester, Mass. Miles.	Hamilton, Ont. Miles.
Madill, Okla.....	632	496	661	661	896
Randolph, "	640	504	669	669	904
Ada, "	687	551	716	716	906
Weleetka, "	741	605	770	770	1005
Vinita, "	865	729	894	894	1129
Durant, "	626	490	655	655	890
Boswell, "	656	520	685	685	920
Hugo, "	636	500	665	665	900
Ft. Towson, "	651	515	680	680	915
Idabel, "	679	543	708	708	943
Talihina, "	711	575	740	740	975
Boynton, "	787	651	816	816	1051
Muskogee, "	806	670	835	835	1070
Westville, "	872	736	901	901	1136
Davenport, "	846	710	875	875	1110
Okla. City, "	876	740	905	905	1140
Tuttle, "	817	681	846	846	1081
Fletcher, "	805	669	834	834	1069
Lawton, "	785	649	814	814	1049
Indiahoma "	764	628	793	793	1028
Snyder, "	751	615	780	780	1015
Cold Springs "	761	625	790	790	1025
Hobart, "	769	633	798	798	1033
Thomas, "	837	701	866	866	1101
Enid, "	910	774	939	939	1174

Statement Showing Rail Distances Oklahoma Points Shown to New England Points Shown via Galveston and Gulf; Also Same Origins and Destinations via St. Louis, All Rail—Continued.

[fol. 195] Via Galveston

To..... From—	Lewiston, Me. Miles.	Millville, N. J. Miles.	Newport, N. H. Miles.	Providence, R. I. Miles.	Utica, N. Y. Miles.
Madill, Okla.....	802	526	745	583	632
Randolph, "	810	534	753	591	640
Ada, "	857	581	800	638	687
Weleetka, "	911	635	854	692	741
Vinita, "	1035	759	978	816	865
Durant, "	796	520	739	577	626
Boswell, "	826	550	769	607	656
Hugo, "	806	530	749	587	636
Ft. Towson, "	821	545	764	602	651
Idabel, "	849	573	792	630	679
Talihina, "	881	605	824	662	711
Boynton, "	957	681	900	738	787
Muskogee, "	976	700	919	757	806
Westville, "	1042	765	985	823	872
Davenport, "	1016	740	959	797	846
Okla. City, "	1046	770	989	827	876
Tuttle, "	987	711	930	768	817
Fletcher, "	975	699	918	756	805
Lawton, "	955	679	898	736	785
Indiahoma, "	934	658	877	715	764
Snyder, "	921	645	864	702	751
Cold Springs, "	931	655	874	712	761
Hobart, "	939	663	882	720	769
Thomas, "	1007	731	950	788	837
Enid, "	1080	804	1023	861	910

Statement Showing Rail Distances Oklahoma Points Shown to New England Points Shown via Galveston and Gulf; Also Same Origins and Destinations via St. Louis, All Rail—Continued.

[fol. 196]

Via Galveston

To..... From—	Wilkes-Barre, Pa. Miles.	Woodberry, Md. Miles.	Syracuse, N. Y. Miles.	Waterville, Me. Miles.	Winchester N. H. Miles.
Madill, Okla.....	571	584	682	850	637
Randolph, "	579	592	690	858	645
Ada, "	626	639	737	905	692
Weleetka, "	680	693	791	959	746
Vinita, "	804	817	915	1083	870
Durant, "	565	578	676	844	631
Boswell, "	595	608	706	874	661
Hugo, "	575	588	686	854	641
Ft. Towson, "	590	603	701	869	656
Idabel, "	618	631	729	897	684
Talihina, "	650	663	761	929	716
Boynton, "	726	739	837	1005	792
Muskogee, "	745	758	856	1024	811
Westville, "	811	824	922	1090	877
Davenport, "	785	798	896	1064	851
Okla. City, "	815	828	926	1094	881
Tuttle, "	756	769	867	1035	822
Fletcher, "	744	757	855	1023	810
Lawton, "	724	737	835	1003	790
Indiahoma, "	703	716	815	982	769
Snyder, "	690	703	801	969	756
Cold Springs, "	700	713	811	979	766
Hobart, "	708	721	819	987	774
Thomas, "	776	789	887	955	842
Enid, "	849	862	960	1128	915

Statement Showing Rail Distances Oklahoma Points Shown to New England Points Shown via Galveston and Gulf; Also Same Origins and Destinations via St. Louis, All Rail—Continued.

[fol. 197] Via Galveston

To..... From—	Buffalo, N. Y. Miles.	Bennington, N. Y. Miles.	Montreal, P. Q. Miles.	St. Thomas, Ont. Miles.	Toronto, Ont. Miles.
Madill, Okla....	835	580	779	974	935
Randolph, "	843	588	787	982	943
Ada, "	894	635	734	1029	994
Weleetka, "	944	689	888	1083	1044
Vinita, "	1068	813	1012	1207	1168
Durant, "	829	574	773	968	929
Boswell, "	859	604	803	998	959
Hugo, "	839	584	783	978	939
Ft. Towson, "	854	599	798	993	954
Idabel, "	882	627	826	1021	982
Talihina, "	914	659	858	1053	1014
Boynton, "	990	735	934	1129	1090
Muskogee, "	1009	754	953	1148	1190
Westville, "	1075	820	1019	1214	1175
Davenport, "	1049	794	993	1188	1149
Okla. City, "	1079	824	1023	1218	1179
Tuttle, "	1020	765	964	1159	1120
Fletcher, "	1008	753	952	1147	1108
Lawton, "	988	733	932	1127	1088
Indiahoma, "	967	712	911	1106	1067
Snyder, "	954	699	898	1093	1054
Cold Springs, "	964	709	908	1103	1064
Hobart, "	972	717	916	1111	1072
Thomas, "	1040	785	984	1179	1140
Enid, "	1113	858	1057	1252	1213

Statement Showing Rail Distances Oklahoma Points Shown to New England Points Shown via Galveston and Gulf; Also Same Origins and Destinations via St. Louis, All Rail—Continued.

[fol. 198] Via St. Louis

To.....	Cambridge, Mass.	Bristol, Conn.	Bristol, N. H.	Gloucester, Mass.	Hamilton, Ont.
From—	Miles.	Miles.	Miles.	Miles.	Miles.
Madill, Okla.....	1807	1756	1921	1921	1280
Randolph, "	1800	1749	1914	1914	1273
Ada, "	1753	1702	1867	1867	1226
Weleetka, "	1699	1648	1813	1813	1172
Vinita, "	1564	1513	1678	1678	1037
Durant, "	1815	1764	1929	1929	1288
Boswell, "	1784	1733	1898	1898	1257
Hugo, "	1763	1712	1877	1877	1236
Ft. Towson, "	1779	1728	1893	1893	1252
Idabel, "	1807	1756	1921	1921	1280
Talihina, "	1688	1637	1702	1702	1161
Boynton, "	1680	1629	1794	1794	1153
Muskogee, "	1661	1610	1775	1775	1134
Westville, "	1589	1538	1703	1703	1062
Davenport, "	1690	1639	1804	1804	1163
Okla. City, "	1747	1696	1861	1861	1220
Tuttle, "	1767	1716	1881	1881	1240
Fletcher, "	1815	1764	1929	1929	1288
Lawton, "	1835	1784	1949	1949	1308
Indiahoma, "	1857	1806	1971	1971	1330
Snyder, "	1869	1838	1983	1983	1342
Cold Springs, "	1879	1828	1993	1993	1352
Hobart, "	1881	1830	1995	1995	1354
Thomas, "	1822	1771	1936	1936	1295
Enid, "	1749	1698	1863	1863	1222

Statement Showing Rail Distances Oklahoma Points Shown to New England Points Shown via Galveston and Gulf; Also Same Origins and Destinations via St. Louis, All Rail—Continued.

[fol. 199] Via St. Louis

To.....	Lewiston, Me.	Millville, N. J.	Newport, N. H.	Providence, R. I.	Utica, N. Y.
From—	Miles.	Miles.	Miles.	Miles.	Miles.
Madill, Okla.....	1062	1606	2005	1843	1523
Randolph, "	2055	1599	1998	1836	1516
Ada, "	2008	1552	1951	1789	1469
Weleetka, "	1954	1498	1897	1735	1415
Vinita, "	1819	1363	1762	1600	1280
Durant, "	2070	1614	2013	1851	1531
Boswell, "	2039	1583	1982	1820	1500
Hugo, "	2018	1562	1961	1799	1479
Ft. Towson, "	2034	1578	1977	1815	1495
Idabel, "	2062	1606	2006	1843	1523
Talihina, "	1943	1487	1886	1724	1404
Boynton, "	1935	1479	1878	1716	1396
Muskogee, "	1916	1460	1859	1697	1377
Westville, "	1844	1388	1787	1625	1305
Davenport, "	1945	1489	1888	1726	1406
Okla. City, "	2002	1546	1945	1783	1463
Tuttle, "	2022	1569	1965	1803	1483
Fletcher, "	2070	1614	2013	1851	1531
Lawton, "	2080	1634	2033	1871	1551
Indiahoma, "	2112	1656	2055	1893	1573
Snyder, "	2124	1668	2067	1905	1585
Cold Springs, "	2134	1678	2077	1915	1595
Hobart, "	2136	1680	2079	1917	1597
Thomas, "	2077	1621	2020	1858	1538
Enid, "	2004	1548	1947	1785	1465

Statement Showing Rail Distances Oklahoma Points Shown to New England Points Shown via Galveston and Gulf; Also Same Origins and Destinations via St. Louis, All Rail—Continued.

[fol. 200] Via St. Louis

To..... From—	Wilkes-Barre, Pa. Miles.	Woodberry, Md. Miles.	Syracuse, N. Y. Miles.	Waterville, Me. Miles.	Winchester, N. H. Miles.
Madill, Okla.....	1514	1534	1470	2110	1897
Randolph, "	1507	1527	1463	2103	1890
Ada, "	1460	1480	1416	2056	1843
Weleetka, "	1406	1426	1362	2002	1789
Vinita, "	1271	1291	1227	1867	1654
Durant, "	1522	1542	1478	2118	1905
Boswell, "	1491	1511	1447	2087	1874
Hugo, "	1470	1490	1426	2066	1853
Ft. Towson, "	1486	1506	1442	2082	1869
Idabel, "	1514	1534	1470	2110	1897
Talihina, "	1395	1415	1351	1991	1778
Boynton, "	1397	1407	1343	1983	1770
Muskogee, "	1368	1388	1324	1964	1751
Westville, "	1296	1316	1252	1892	1679
Davenport, "	1397	1417	1353	1993	1780
Okla. City, "	1454	1474	1410	2050	1837
Tuttle, "	1474	1494	1430	2070	1857
Fletcher, "	1522	1542	1478	2118	1905
Lawton, "	1542	1562	1498	2138	1925
Indiahoma, "	1564	1584	1520	2160	1947
Snyder, "	1576	1596	1532	2172	1959
Cold Springs, "	1586	1606	1542	2182	1969
Hobart, "	1588	1608	1544	2184	1971
Thomas, "	1529	1549	1485	2125	1912
Enid, "	1456	1476	1412	2052	1839

Statement Showing Rail Distances Oklahoma Points Shown to New England Points Shown via Galveston and Gulf; Also Same Origins and Destinations via St. Louis, All Rail—Continued.

[fol. 201] Via St. Louis

To..... From—	Buffalo, N. Y. Miles.	Bennington, V. T. Miles.	Montreal, P. Q. Miles.	St. Thomas, Ont. Miles.	Toronto, Ont. Miles.
Madill, Okla.....	1321	1699	1652	1200	1318
Randolph, "	1314	1692	1645	1193	1311
Ada, "	1267	1645	1598	1146	1264
Weleetka, "	1213	1591	1544	1192	1210
Vinita, "	1078	1456	1409	957	1075
Durant, "	1329	1707	1660	1208	1332
Boswell, "	1298	1676	1629	1177	1295
Hugo, "	1277	1655	1608	1156	1274
Ft. Towson, "	1293	1671	1624	1172	1290
Idabel, "	1321	1699	1652	1200	1318
Talihina, "	1202	1580	1533	1081	1199
Boynton, "	1194	1572	1525	1073	1191
Muskogee, "	1175	1553	1506	1054	1172
Westville, "	1103	1481	1434	982	1100
Davenport, "	1204	1582	1535	1083	1201
Okla. City, "	1261	1639	1592	1140	1258
Tuttle, "	1281	1659	1612	1160	1278
Fletcher, "	1329	1707	1660	1208	1326
Lawton, "	1349	1727	1680	1228	1346
Indiahoma, "	1371	1749	1702	1250	1368
Snyder, "	1383	1761	1714	1262	1380
Cold Springs, "	1393	1771	1724	1272	1390
Hobart, "	1395	1773	1726	1274	1392
Thomas, "	1336	1714	1667	1215	1333
Enid, "	1263	1641	1594	1142	1260

[fol. 202] EXHIBIT NO. 21 IN EVIDENCE

Witness: Strupper

I. C. C. Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE et al.

vs.

ARCADE & ATTICA RAILROAD CORPORATION et al.

Statement Showing Distance from Texas Points Shown to New England Points Shown via Galveston; Also from Same Origins to Same Destinations via All-rail

Via Galveston

To.....	Cambridge, Mass.	Bristol, Conn.	Bristol, N. H.	Gloucester, Mass.	Hamilton, Ont.
From—	Miles.	Miles.	Miles.	Miles.	Miles.
Dallas, Tex....	550	414	579	579	814
Ft. Worth, "	670	434	599	599	834
Sherman, "	613	477	642	642	877
Paris, "	640	504	669	669	904
Greenville, "	788	47[illegible]	617	617	852
Vernon, "	735	59[illegible]	764	764	999
Wichita Falls, "	685	549	714	714	949
Cleburne, Tex.....	555	419	584	584	819
Weatherford, "	595	459	624	624	859
Corsicana, "	482	346	511	511	746
Waxahachie, "	513	377	542	542	777
Terrell, "	535	399	564	564	799
Stephenville, "	583	474	612	612	847
Waco, "	580	344	509	509	744

To.....	Lewiston, Me.	Millville, N. J.	Newport, N. H.	Providence, R. I.	Utica, N. Y.
From—	Miles.	Miles.	Miles.	Miles.	Miles.
Dallas, Tex.....	720	444	663	501	550
Ft. Worth, "	740	464	683	521	570
Sherman, "	783	507	726	564	613
Paris, "	810	534	753	591	640
Greenville, "	758	482	701	539	588
Vernon, "	905	629	848	686	735
Wichita Falls, "	855	579	798	636	685
Cleburne, Tex.....	725	449	668	506	555
Weatherford "	765	489	708	546	595
Corsicana, "	652	376	595	433	482
Waxahachie, "	683	407	626	464	513
Terrell, "	705	429	648	486	535
Stephenville, "	753	477	696	534	583
Waco, "	650	374	593	431	480

Statement Showing Distance from Texas Points Shown to New England Points Shown via Galveston; Also from Same Origins to Same Destinations via All-rail—Continued.

[fol. 203] Via Galveston

To.....	Wilkes-Barre, Pa.	Woodberry, Md.	Syracuse, N. Y.	Waterville, Me.	Winchester N. H.
From—	Miles.	Miles.	Miles.	Miles.	Miles.
Dallas, Tex.....	489	502	600	768	555
Ft. Worth, "	509	522	620	788	576
Sherman, "	552	565	663	831	618
Paris, "	579	592	690	858	645
Greenville, "	527	540	638	806	593
Vernon, "	674	687	785	953	740
Wichita Falls,"	624	637	735	903	690
Cleburne, Tex.....	494	507	605	773	560
Weatherford, "	534	547	645	813	600
Corsicana, "	421	434	532	700	487
Waxahachie, "	452	465	563	731	518
Terrell, "	474	487	585	753	540
Stephenville, "	522	535	633	801	588
Waco, "	419	432	530	698	485

To.....	Buffalo, N. Y.	Bennington, Vt.	Montreal, P. Q.	St. Thomas, Ont.	Toronto Ont.
From—	Miles.	Miles.	Miles.	Miles.	Miles.
Dallas, Tex.....	753	498	697	892	853
Ft. Worth, "	773	518	717	912	873
Sherman, "	816	561	760	955	916
Paris, "	843	588	787	1082	943
Greenville, "	791	536	735	930	891
Vernon, "	938	683	882	1077	1038
Wichita Falls,"	888	633	832	1027	988
Cleburne, Tex.....	758	503	702	897	858
Weatherford, "	798	543	742	937	898
Corsicana, "	685	430	629	824	785
Waxahachie, "	716	461	660	855	816
Terrell, "	738	483	682	877	838
Stephenville, "	786	531	730	925	886
Waco, "	683	428	627	822	783

Statement Showing Distance from Texas Points Shown to New England Points Shown via Galveston; Also from Same Origins to Same Destinations via All-rail—Continued.

[fol. 204] Via St. Louis

To.....	Cambridge, Mass.	Bristol, Conn.	Bristol, *Conn.*	Gloucester, Mass.	Hamilton, Ont.
From—	Miles.	Miles.	Miles.	Miles.	Miles.
Dallas, Tex.....	1913	1862	2027	2027	1486
Ft. Worth, "	1944	1893	2058	2058	1417
Sherman, "	1849	1798	1963	1963	1322
Paris, "	1790	1739	1904	1904	1263
Greenville, "	1841	1790	1955	1955	1314
Vernon, "	2013	1862	2027	2027	1386
Wichita Falls,"	1970	1919	2084	2084	1443
Cleburne, Tex.	1966	1915	2080	2080	1439
Weatherford, "	1974	1923	2088	2088	1447
Corsicana, "	1967	1916	2081	2081	1440
Waxahachie, "	1955	1904	2069	2069	1428
Terrell, "	1874	1823	1988	1988	1347
Stephenville, "	2020	1969	2134	2134	1493
Waco, "	2021	1970	2135	2135	1494

To.....	Lewiston, Me.	Millville, N. J.	Newport, N. H.	Providence, R. I.	Utica, N. Y.
From—	Miles.	Miles.	Miles.	Miles.	Miles.
Dallas, Tex.....	2168	1712	2111	1949	1629
Ft. Worth, "	2199	1743	2142	1980	1660
Sherman, "	2104	1648	2047	1885	1565
Paris, "	2045	1589	1988	1826	1506
Greenville, "	2096	1640	2039	1877	1557
Vernon, "	2168	1712	2111	1949	1629
Wichita Falls,"	2225	1769	2168	2006	1686
Cleburne, Tex.....	2221	1765	2164	2002	1682
Weatherford, "	2229	1773	2172	2010	1690
Corsicana, "	2222	1766	2165	2003	1683
Waxahachie, "	2210	1754	2153	1991	1671
Terrell, "	2129	1673	2072	1910	1590
Stephenville, "	2275	1819	2218	2056	1736
Waco, "	2276	1820	2219	2057	1737

Statement Showing Distance from Texas Points Shown to New England Points Shown via Galveston; Also from Same Origins to Same Destinations via All-rail—Continued.

[fol. 205] Via St. Louis

To.....	Wilkes-Barre, Pa.	Woodberry, Md.	Syracuse, N. Y.	Waterville, N. Y.	Winchester, N. H.
From—	Miles.	Miles.	Miles.	Miles.	Miles.
Dallas, Tex.....	1620	1640	1576	2216	2003
Ft. Worth, "	1651	1671	1607	2247	2034
Sherman, "	1556	1576	1512	2152	1939
Paris, "	1497	1517	1453	2093	1880
Greenville, "	1548	1568	1504	2144	1931
Vernon, "	1620	1640	1576	2216	2003
Wichita Falls, "	1677	1697	1633	2273	2060
Cleburne, Tex.....	1673	1693	1629	2269	2056
Weatherford, "	1681	1701	1637	2277	2064
Corsicana, "	1674	1694	1630	2270	2057
Waxahachie, "	1662	1682	1618	2258	2045
Terrell, "	1581	1601	1537	2177	1964
Stephenville, "	1727	1747	1783	2323	2110
Waco, "	1728	1748	1684	2324	2111

To.....	Buffalo, N. Y.	Bennington, Vt.	Montreal, P. Q.	St. Thomas, Ont.	Toronto, Ont.
From—	Miles.	Miles.	Miles.	Miles.	Miles.
Dallas, Tex.....	1427	1805	1758	1306	1424
Ft. Worth, "	1458	1836	1789	1337	1455
Sherman, "	1363	1741	1694	1242	1360
Paris, "	1304	1682	1635	1183	1301
Greenville, "	1355	1733	1686	1234	1352
Vernon, "	1427	1805	1758	1306	1424
Wichita Falls, "	1484	1862	1815	1363	1481
Cleburne, Tex.....	1480	1858	1811	1359	1477
Weatherford, "	1488	1866	1819	1367	1485
Corsicana, "	1481	1859	1812	1360	1478
Waxahachie, "	1469	1847	1800	1348	1466
Terrell, "	1388	1766	1719	1267	1385
Stephenville, "	1534	1912	1865	1413	1531
Waco, "	1535	1913	1866	1414	1532

[fols. 205-a–208] In United States District Court

Order Approving Statement of Evidence—Filed July 25, 1925

Upon the stipulation of the parties, it is

Ordered that the oral testimony, reduced to narrative form, and the 21 exhibits offered before and received by the Interstate Commerce Commission and introduced in evidence in this cause, be and the same are hereby approved.

It is further ordered, that the minutes of the proceedings of June 8th and 9th, 1925, before the United States District Court, except the argument, be and the same is hereby approved.

Dated this 24th day of July, A. D. 1925.

Rufus E. Foster, Circuit Judge. James C. Wilson, District Judge.

[fol. 209] In United States District Court

[Title omitted]

Answer of the Chicago, Rock Island and Pacific Railway Company and Chicago, Rock Island & Gulf Railway Company

Defendants, The Chicago, Rock Island and Pacific Railway Company and The Chicago, Rock Island and Gulf Railway Company, for answer to the complaing herein, respectfully state:

I

They are without information concerning the allegations of Paragraph I and the leave complainant to its proof.

II

Defendants admit that they are common carriers engaged in interstate commerce.

III

For answer to all allegations herein purporting to state freight rates, defendants refer to the published tariffs as affording the best answer thereto. Defendants deny that the rates herein complained of are in violation of the Act to Regulate Commerce, as specifically alleged. Defendants deny that complainant is entitled to the relief prayed for, or to any part thereof, or to any other or further relief, or to any relief whatsoever.

Wherefore, having thus fully answered, defendants pray to be dismissed.

The Chicago, Rock Island and Pacific Railway Company, The Chicago, Rock Island and Gulf Railway Company, by A. B. Enoch, Their Attorney.

[fols. 210-217] Petition for rehearing, covering eight pages, omitted from this print.

[fol. 218] IN UNITED STATES DISTRICT COURT

MOTION TO MODIFY ORDER OF COMMISSION

Come now defendants and move that the Commission modify its order herein so as to permit defendants to publish rates required without violating the Fourth Section and without reducing rates at intermediate points.

Argument in Support of Motion

In the order in this case, issued the 9th day of March, 1925, the Commission required defendants to publish rates rail-and-water and rail-water-rail on cotton from points in Oklahoma on lines of defendants as specified therein to New England Territory which would not be in excess of rates 4 cents per 100 pounds lower than the present all-rail rates from and to the same points.

These defendants point out that this order cannot be complied with unless rates are reduced from intermediate points not involved in the complaint or Fourth Section violations are created. The rates from points in Oklahoma via rail-and-water and rail-water-rail to points in New England territory would be lower under the basis prescribed in the order than the rates from intermediate points in Oklahoma and Texas. There is attached hereto as Exhibit "A", a Statement showing this situation from and to representative points.

The rates from Texas to New England territory were not involved in this case, yet a strict compliance with the Commissioner's order herein without Fourth Section Relief would require reductions in those rates; also a compliance with the Commissioner's order without Fourth Section Relief would produce rates from points in Southern Oklahoma which would be considerably more than 4 cents under all-rail rates which was the basis asked for by the complain-[fol. 219] ants and prescribed by the Commission.

Exhibit "A" attached hereto will show that all-rail rates from Northern Oklahoma in which territory but little, if any, cotton is produced are lower than those which apply from the southern part of Oklahoma in which territory considerable cotton is produced. Witness Dalzell testified that the northern limit of the cotton producing section of Oklahoma was Oklahoma City. (Rec. p. 51.)

Therefore the lower all-rail rates applying from northern Oklahoma which move little, if any, cotton would set the level of the rates from Southern Oklahoma which territory produces considerable cotton, and would make lower rates from Southern Oklahoma than intended under the Commissioner's order because a greater differential than 4 cents would be produced under the all-rail rates from southern Oklahoma points.

It appears from the record that the Steamship Lines, defendants in this case, offered to esta' lish rates made differentially under all-rail rates observing as a minimum rates from Texas common points (Rec. pp. 76, 95-6). This proposition was agreed to by complainants as shown in the testimony of witness West, who testified at pages 117-18, that:

I agreed at that time that the rates from North Texas should be the minimum, and I still think so. That is to say, if any through rates are put into effect from Oklahoma viz the Gulf to New England points they might very properly be made no less than the rates from Northern Texas to those same points and New England.

Witness Thornton concurred in this proprosition at page 142.

This matter has not heretofore been called to the Commission's attention because previous to the order of the Commission, March 9, 1925, no order was issued in this case. The opinion of the Com-[fol. 220] mission was issued on January 23, 1924, but no order was entered until March 9, 1925. Upon receipt of formal order on March 16th, 1925, the matter was again given consideration and the above situation was discovered.

In view of the above, it is respectfully requested that the Commission modify its order by granting Fourth Section Relief or by a provision stating that the maximum Texas common point rate of $1.50 may be held as a minimum. This proposition has the approval of the complainants as shown by the record.

The order of March 9, 1925, requires that the rates be established or not less than five days' notice on or before April 25, 1925. It is therefore requested that the time limit set in that order be further extended so that the Commission may have time to give consideration to this application for modification and that the carriers, after this application has been passed on, may have sufficient time within which to comply with whatever final order may be issued.

Respectfully submitted, Mallory Steamship Company, by W. P. Levis, Pier 36, N. R., New York, N. Y.; Southern Pacific Company-Atlantic Steamship Lines, by Wm. Simmons, 165 Broadway, New York, N. Y.; Southern Pacific Lines in Texas, by J. R. Bell, G. H. Muckley, 165 Broadway, New York, N. Y., Attorneys for Defendants.

Dated New York, N. Y., April 2, 1925.

Rates on Cotton (in Cents per 100 lbs.) from Texas and Oklahoma to New England Points

Rates from Texas points via Gulf and from Oklahoma via rail are present rates. Rates from Oklahoma via Gulf are rates that would result from 4 cent differential under rail prescribed in I. C. C. 13418.

Points of origin are stated in the order of distance from Galveston.

From—	Via	To— New Bedford, Mass. L. C. L.	New Bedford, Mass. C. L.	Lowell, Mass. L. C. L.	Lowell, Mass. C. L.	Manchester, N. H. L. C. L.	Manchester, N. H. C. L.	Ashland, N. H. L. C. L.	Ashland, N. H. C. L.
"Santa Fe System:"									
Gainesville, Texas	Gulf	150	146	150	147	150	147½	150	150
Thackerville, Ok., to Newkirk, Ok. (Inclusive)	Rail	154	154	154	154	154	154	154	154
	Gulf	150	150	150	150	150	150	150	150
Missouri-Kansas-Texas R. R.:									
Denison, Texas	Gulf	150	146	150	147	150	147½	150	150
Colbert, Okla. to Oktaha, Okla. (Inclusive)	Rail	154	154	154	154	154	154	154	154
	Gulf	150	150	150	150	150	150	150	150
Summit, Ok	Rail	151½	151½	151½	151½	151½	151½	151½	151½
	Gulf	147½	147½	147½	147½	147½	147½	147½	147½
Neha, Okla., Muskogee, Ok., Wybark, Ok., Gibson, Ok.	Rail	147½	147½	147½	147½	147½	147½	147½	147½
	Gulf	143½	143½	143½	143½	143½	143½	143½	143½
Wagoner, Ok., to Russell Creek, Ok. (Inclusive)	Rail	145	145	145	145	145	145	145	145
	Gulf	141	141	141	141	141	141	141	141

[fol. 222] "Frisco Systems:"

Paris, Texas, Arthur City, Texas	Guf	150	146	150	147	150	147½	150	150
	Gulf	150	146	150	147	150	147½	150	150
Ord, Ok., to Walton, Ok. (Inclusive)	Rail	154	154	154	154	154	154	154	154
	Gulf	150	150	150	150	150	150	150	150
Eubanks, Ok., to Talihina, Ok. (Inclusive)	Rail	150	150	150	150	150	150	150	150
	Gulf	146	146	146	146	146	146	146	146
Lamberton, Ok., to Le Flore, Ok. (Inclusive)	Rail	147½	147½	147½	147½	147½	147½	147½	147½
	Gulf	143½	143½	143½	143½	143½	143½	143½	143½
Falson, Ok	Rail	145½	145½	145½	145½	145½	145½	145½	145½
	Gulf	141½	141½	141½	141½	141½	141½	141½	141½
O'Hara, Ok., to Poteau, Ok. (Inclusive)	Rail	145	145	145	145	145	145	145	145
	Gulf	141	141	141	141	141	141	141	141
Neff, Okla., Cameron, Ok., Rock Island, Ok	Rail	142	142	142	142	142	142	142	142
	Gulf	138	138	138	138	138	138	138	138
"Frisco System:"									
Denison, Texas	Gulf	150	146	150	147	150	147½	150	150
Pickwick, Ok., to Nemo, Ok. (Inclusive)	Rail	154	154	154	154	154	154	154	154
	Gulf	150	150	150	150	150	150	150	150
Vinita, Ok., to Wyandotte, Ok. (Inclusive)	Rail	145	145	145	145	145	145	145	145
	Gulf	141	141	141	141	141	141	141	141

[fol. 223] "Rock Island System:"

Ringgold, Texas	Gulf	150	146	150	147	150	147½	150	150
Terral, Ok., to El Reno, Ok. (Inclusive)	Rail	154	154	154	154	154	154	154	154
	Gulf	150	150	150	150	150	150	150	150
El Reno, Ok., to Parnola, Ok. (Inclusive)	Rail	154	154	154	154	154	154	154	154
	Gulf	150	150	150	150	150	150	150	150
Red Oak, Ok., to Monroe, Ok. (Inclusive)	Rail	145	145	145	145	145	145	145	145
	Gulf	141	141	141	141	141	141	141	141

[fol. 224] IN UNITED STATES DISTRICT COURT

EXHIBIT IN EVIDENCE

Certified Copy of Telegram, Dated April 1, 1925, from F. A. Leland to the Interstate Commerce Commission

1925, Apr. 1, P. M. 5.47.

AA369. CAK.
St. Louis, Mo. 1 352P.

G. B. McGinty, Interstate Commerce Commission, Washington, D. C.:

Order commission docket thirteen four eighteen effective April twenty fifth stop Oklahoma lines now in session fully concur in petition filed by Morgan and Mallory line for Modification of order permitting publication of minimum rate one dollar fifty cents stop rates all rail to seaboard are lower from northern and eastern Oklahoma than from majority of state and very little cotton produced in the lower rated section stop carriers also providing for application of same.

1925, Apr. 1, P. M. 5.47.

AA369 sheet two.

Rates Oklahoma to Seaboard via New Orleans in harmony decision in docket thirteen seven three six stop Oklahoma carriers urge modification of order as outlined petition referred to as otherwise will have to file petition for fourth section relief and extension of time sufficient enable commission pass on fourth section application stop cotton does not move from Oklahoma until after August first and no pressing necessity for effective date April twenty fifth stop there is practically no storage cotton now in Oklahoma and no movement available via Gulf until approximately September First stop in

[fols. 225-226] 1925, Apr. 1, P. M. 5.47.

AA369 sheet three.

view short time intervening prior to effective date appreciate early action by Commission and advice by wire.

F. A. Leland.

Secretary's certificate to foregoing paper omitted in printing.

[fols. 227 & 228] IN UNITED STATES DISTRICT COURT

APPEARANCE OF INTERSTATE COMMERCE COMMISSION AS INTERVENOR—Filed June 6, 1925

To the Honorable the Judges of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150, we hereby enter the appearance of the Inter-

state Commerce Commission, as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

P. J. Farrell, D. W. Knowlton.

[fol. 229] In United States District Court

Clerk's Certificate

I, Geo. W. Parker, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct copy of the Transcript of the record, Assignments of error and all proceedings in Cause No. 3091-349, Equity, Wherein, The Chicago, Rock Island and Pacific Railway Company, and St. Louis, San Francisco Railway Company, are plaintiffs, and the United States of America, is Defendant, as fully as the same now remain on file and of record in my office at Dallas, Texas.

Witness my hand officially and the seal of said Court at Dallas, Texas, this the 27th day of July, A. D. 1925.

Geo. W. Parker, Clerk, by Mary Conger, Deputy. (The Seal of the U. S. District Court, Northern Dist. Texas, Dallas.)

[fol. 230] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation by Appellants of Parts of Record to be Printed—Filed August 12, 1925

Now come the appellants in the above-entitled cause, by T. P. Littlepage, M. G. Roberts and A. B. Enoch, their solicitors, and file this their statement of the points upon which it is intended to rely and of the parts of the record thought to be necessary for the consideration thereof, with proof of service of the same on the adverse parties.

Statement of the Points

I

That the questions of establishing a relationship or differential [fol. 231] between the rates to apply partly by rail and partly by water and the present all-rail rates from and to the same points, or of equalizing the rail-and-water rates and routes with the all-rail rates and routes, were not in issue.

II

That the Interstate Commerce Commission was without authority or power to establish a relationship or differential between the rates to apply partly by rail and partly by water and the present all-rail

rates from and to the same points, or to equalize the rail-and-water rates and routes with the all-rail rates and routes.

III

That the order of the Interstate Commerce Commission, as modified, was not based upon a consideration of the reasonableness of the rates required to be established and maintained over the routes partly by rail and partly by water.

IV

That the order, as modified, is arbitrary and baseless, and without competent evidence to support it.

V

That the Interstate Commerce Commission did not have before it competent evidence from which to determine that the rates complained of were unreasonable, or that the rates established were reasonable rates.

VI

That the Interstate Commerce Commission did not have before it competent evidence from which to determine that the rates required to be established and maintained should not exceed rates 4 cents per 100 pounds lower than the present all-rail rates from and to the [fol. 232] same points.

VII

That the order, as modified, is void because the evidence does not show the points between which the rates are required to be established and because the tariffs and supplements referred to in the said order are not in evidence.

VIII

That the order, as modified, is not an order establishing reasonable rates or reasonable maximum rates.

IX

That the order, as modified, is void because it was entered at a date subsequent to the date of the Commission's last report and without any notice to appellants and without giving them an opportunity to be heard.

X

That the jurisdiction of the Interstate Commerce Commission under Paragraph (13) of Sec. 6 of the Interstate Commerce Act was not invoked in this proceeding.

XI

That the boat lines are not, nor is the transportation of cotton via Galveston, Tex., and the boat lines, subject to the jurisdiction of the Commission or to the terms and provisions of the Interstate Commerce Act.

XII

That the through routes partly by rail and partly by water, established by the Interstate Commerce Commission, short-haul the appellants contrary to the provisions of Paragraph (4) of Sec. 15 of the Interstate Commerce Act.

XIII

[fol. 233] That the order, as amended, is not supported by the conclusions and findings.

Parts of the Record

1. Bill of Complaint with the exhibits attached thereto.
2. Answer of United States of America.
3. Answer of Interstate Commerce Commission.
4. Answer of Houston Cotton Exchange and Board of Trade.
5. Testimony before the Interstate Commerce Commission reduced in narrative form, together with the exhibits attached thereto.
6. Affidavit of Ernest D. Mills.
7. Certified copy of the telegram from Leland.
8. Opinion of the District Court.
9. Decree dismissing the Bill of Complaint.
10. Assignment of Errors.

T. P. Littlepage, M. G. Roberts, A. B. Enoch, Solicitors for Appellants.

State of Illinois,
County of Cook, ss:

A. B. Enoch, being first duly sworn on oath, deposes and says that he is one of the solicitors for the appellants in the above-entitled cause, and that he has this day served the foregoing statement upon the adverse parties by sending copies thereof by United States mail to Blackburn Esterline, Assistant to the Solicitor General of the United States, Washington, D. C., one addressed to P. J. Farrell, [fols. 234 & 234a] Solicitor for the Interstate Commerce Commission, and one addressed to R. C. Fulbright, Houston, Texas.

A. B. Enoch.

Subscribed and sworn to before me this 10th day of August, A. D. 1925. W. J. Gedl, Notary Public. My commission expires Nov. 16, 1925. (Seal W. J. Gedl, Notary Public, Cook County, Ill.)

[File endorsement omitted.]

[fol. 235] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION BY APPELLEES OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed August 20, 1925

To William R. Stansbury, Esq., Clerk Supreme Court of the United States:

The appellees, United States of America and Interstate Commerce Commission, and each of them by their respective counsel hereby designate for printing as additional parts of the record which they think material the following:

1. Intervention of Interstate Commerce Commission.
2. Answer of The Chicago, Rock Island and Pacific Railway Company, filed in the proceeding before the Interstate Commerce Commission.
3. Petition for rehearing filed with the Interstate Commerce Commission by the Atchison, Topeka & Santa Fe Railway Company and other carrier defendants in the proceeding before said Commission.
4 Application on behalf of defendants for modification of the order, filed in the proceeding before the Interstate Commerce Commission.

August 17, 1925.

William D. Mitchell, Solicitor General P. J. Farrell, Solicitor for Interstate Commerce Commission.

[File endorsement omitted.]

Endorsed on cover: File No. 31,372. N. Texas D. C. U. S. Term No. 649. The Chicago, Rock Island and Pacific Railway Company and St. Louis-San Francisco Railway Company, appellants, vs. United States of America, Interstate Commerce Commission, Houston Cotton Exchange, et al. Filed July 30, 1925. File No. 31,372.

FILED
JAN 10 1927
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1926.

No. 190

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY AND ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, HOUSTON COTTON EXCHANGE AND BOARD OF TRADE, AND DALLAS COTTON EXCHANGE,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

BRIEF FOR THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY AND ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, APPELLANTS.

M. L. BELL,
W. F. DICKINSON,
T. P. LITTLEPAGE,
M. G. ROBERTS,
A. B. ENOCH,
Counsel for Appellants.

BUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1926.

No. 190

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY AND ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,

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THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, HOUSTON COTTON EXCHANGE AND BOARD OF TRADE, AND DALLAS COTTON EXCHANGE,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

BRIEF FOR THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY AND ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, APPELLANTS.

OPINION DELIVERED IN THE COURT BELOW.

The opinion delivered in the Court below is reported in 6 Fed. (2d) 888. (R. 46, page 1 in the appendix hereto.)

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The decree to be reviewed was entered on June 9, A. D. 1925. (R. 49.) The basis of this Court's jurisdiction is the final decree denying appellants relief in a suit brought by appellants against United States of America to enjoin the enforcement of an order of the Interstate Commerce Commission and to set it aside. (R. 49.) Urgent Deficiencies Act, October 22, 1913, 38 Stat. 220.

Central R. R. Co. v. *United States*, 257 U. S. 247.
Virginian Ry. Co. v. *United States, et al.*, December 13, 1926.

STATEMENT OF THE CASE.

The case before the Commission was instituted by the filing of a formal complaint. (R. 21.) Houston Cotton Exchange and Board of Trade, Galveston Cotton Exchange and Board of Trade, Galveston Commercial Association, Dallas Cotton Exchange and Oklahoma State Cotton Exchange are shown as complainants. Rail-and-water rates on cotton by way of Galveston to New York and thence by rail, are in issue. (R. 56.) The territory of origin is the State of Oklahoma. The destination territory includes points in eastern trunk line and New England territories, and in eastern Canada. The rail carriers in a position to participate in such traffic and boat lines operating between Galveston and New York were made parties defendant.

The complaint alleges (R. 22, 23) that the defendants do not maintain joint through commodity rates on cotton for movement by rail and water through Galveston and other Texas ports; that the combination basis applies; and that by reason thereof complainants have been subjected to the payment of rates which are unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act. The prayer is for the establishment of through joint rates under Section 15 of the Act. (R. 55.)

A hearing was held at Houston, Tex., beginning April 20, 1922, before an Examiner. (R. 55.) The Oklahoma State Cotton Exchange took no active part in the proceeding. (R. 32.) The Examiner submitted a proposed report (R. 24) recommending that the complaint be dismissed. Exceptions were filed thereto by the complainants and the case was argued orally. On January 23, 1924, the Commission entered its report,

87 I. C. C. 392, (R. 29, page 6, in the appendix hereto) through Commissioners Meyer, Eastman and Potter, in which it found that the defendants should establish joint rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to points in New England territory, and that the existing rates for such transportation were and for the future would be unreasonable to the extent that they exceeded or might exceed rates constructed by the deduction of 4 cents from the present all-rail rates. The Commission further found that the rail-and-water and the rail-water-and-rail rates on cotton from Oklahoma points to eastern trunk line territory were not unreasonable and that it was without authority to require joint through rates to points in Canada. No order was entered at this time.

Upon defendants' petition the proceeding was reopened and further oral argument had. (R. 35.) On November 4, 1924, the Commission entered its report on further argument, 93 I. C. C. 268 (R. 35, page 15 of the appendix hereto), in which its original findings were affirmed. Chairman Hall dissented. (R. 37.) Again no order was entered, but it was said that defendants would be expected to comply with the findings within 90 days of the service of the report, failing which the matter might be again brought to the Commission's attention.

Thereafter the Commission entered its order of March 9, A. D. 1925 (R. 6), requiring the defendants to establish, and thereafter to maintain and apply to the transportation of cotton, in carloads, minimum 20,000 pounds, from points in Oklahoma via Galveston, Tex., and the lines of the Mallory Steamship Company and Southern Pacific Company-Atlantic Steamship Lines, to points in New England territory, joint rail-and-water

and rail-water-and-rail rates which shall not exceed rates 4 cents per 100 pounds lower than the present all-rail rates from and to the same points. This order is set out in the appendix hereto at page 18. On the 28th day of March, A. D. 1925, the Commission entered an order (R. 8) amending its order of March 9, A. D. 1925, by eliminating from the fourth, fifth, sixth and seventh paragraphs the following: "in carloads, minimum 20,000 pounds."

A copy of this order of March 28th is set out in the appendix hereto at page 20. Thereafter, on the 29th day of April, A. D. 1925, the Commission further modified its order of March 9th, as modified by its order of March 28th (R. 9), by adding immediately at the end of the fifth and seventh paragraphs the following:

> "Provided, however, that in complying with said order defendants shall not be required to establish rail-and-water and rail-water-and-rail rates lower than $1.50 per 100 pounds."

This order is set out in the appendix hereto at page 21.

The Chicago, Rock Island and Pacific Railway Company, St. Louis-San Francisco Railway Company, Missouri, Kansas & Texas Railway Company and the Santa Fe System are the four important carriers traversing the cotton section of Oklahoma. (R. 30.) They will be designated the Rock Island, the Frisco, the Katy and the Santa Fe. The rail-and-water rates through the Texas ports were alleged to be unreasonable, but the evidence was confined to the rates through Galveston. (R. 30.) The principal rail-and-water route to New England and eastern trunk line territories is by rail to Galveston and thence to New York by the boat lines. To New York the rail-and-water rate is composed of the local rate to Galveston, the port-to-port rate beyond, and a loading charge. To the other points the rates are

made by adding to the New York rate the rail rates beyond. (R. 30.)

The all-rail routes are through St. Louis, Memphis, and other Mississippi River crossings, and joint all-rail rates apply over these routes. (R. 30.) The Santa Fe and the Katy reach these river crossings and they also reach Galveston. But the Frisco and the Rock Island have direct lines only to the river crossings. (R. 30.) The Rock Island has lines from Oklahoma to Memphis, St. Louis and Chicago (R. 73) and the Frisco has lines from Oklahoma to St. Louis and Memphis. (R. 77.) Fifty per cent of the cotton produced in Oklahoma is for export moving through the Gulf. (R. 33, 72.) On traffic from Oklahoma to the ports the Rock Island obtains a haul as far as Fort Worth or Dallas. (R. 33.) On export cotton through the Gulf the Rock Island and the Frisco are denied the long haul. The order under consideration short-hauls them on the remainder of the Oklahoma production. About 90 per cent of Oklahoma cotton originates at country points, from which it is moved in small lots to the compresses for an average distance of from 60 to 70 miles. The assembling cost is estimated to be 50 per cent of the total transportation cost of cotton over the Rock Island for which it receives no extra compensation. In order to be compensated for this expense the Rock Island and the Frisco were unwilling for the cotton originating on their lines to move except over routes where they receive the long haul. (R. 33.) For these and other reasons that will presently appear the Rock Island and the Frisco instituted this suit.

Appellants filed their verified bill of complaint in the United States District Court for the Northern District of Texas on May 28, A. D. 1925. (R. 1.) United

States of America was named defendant. The suit was brought to enjoin the enforcement of the said order of March 9, A. D. 1925, as modified, and to set it aside. The Interstate Commerce Commission, Houston Cotton Exchange and Board of Trade, and Dallas Cotton Exchange intervened as defendants and, as did United States of America, filed answers to the bill. (R. 37, 40, 42.) A hearing was had on June 8, A. D. 1925, before Rufus E. Foster, Circuit Judge, and W. L. Estes and Wm. H. Atwell, District Judges, upon application for an interlocutory injunction and upon final hearing. The full transcript of the proceedings before the Commission and two affidavits were submitted in evidence. On June 9, A. D. 1925, the Court entered its decree dismissing the bill of complaint for want of equity. The case is here upon appeal from that decree.

Complainants and defendants before the Commission will be designated complainants and defendants, respectively, and rail-and-water rates as well as rail-water-and-rail rates will be referred to as rail-and-water rates.

The rates in issue are those in effect immediately prior to January 1, 1922. Changes in these rates subsequent to that date are not shown by the record before the Commission. The order will be discussed in connection with the rate adjustment shown by the facts which the Commission had before it, except where otherwise noted.

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.

The District Court erred:

II.

In refusing to hold that the Interstate Commerce Commission was without power or authority to establish a relationship or a fixed relationship between the rates via Galveston and the water routes, and the rates via the all-rail routes to and from the same points.

III.

In refusing to hold that the Interstate Commerce Commission was without power or authority to effect an equalization of the rail-water-and-rail rates and the rail-and-water rates with the all-rail rates.

IV.

In refusing to hold that the Interstate Commerce Commission was without power or authority to establish a differential or a fixed differential between the rates via the all-rail routes and those applying partly by rail and partly by water.

V.

In refusing to hold that questions of equalizing the rail-and-water routes with the all-rail routes and of establishing a differential or a relationship between the

rates via the all-rail routes and those applying partly by rail and partly by water were not in issue and that the Interstate Commerce Commission was without authority to determine such questions.

I.

In refusing to hold that the Interstate Commerce Commission was without authority to require plaintiffs to establish joint rates on cotton from Oklahoma via Galveston, Tex., and the boat lines to points in New England territory which shall not exceed 4 cents per 100 pounds lower than the present all-rail rates from and to the same points.

VI.

In refusing to hold that the said order, as modified, is not an order establishing reasonable maximum rates or reasonable maximum joint rates.

XXVII.

In holding that the Commission related the rail-and-water rate to the all-rail rate in such a way as not to be illegal.

XXVIII.

In refusing to hold that the said order, as modified, is arbitrary and baseless, and without competent evidence to support it.

VIII.

In refusing to hold that there is no competent evidence before the Interstate Commerce Commission from which it may be determined that the proposed rates are reasonable maximum rates.

IX.

In refusing to hold that there is no competent evidence before the Interstate Commerce Commission to show that rates for the transportation of cotton via Galveston, Texas, and the boat lines, are, and for the future will be, unreasonable to the extent they exceed, or may exceed rates constructed by the deduction of 4 cents from the present all-rail rates.

X.

In refusing to hold that the said order, as modified, is null and void because there is no competent evidence before the Interstate Commerce Commission to support its finding that the rates complained of are unjust and unreasonable.

XXVI.

In holding that the proceeding was quite within the jurisdiction of the Commission and its carefulness and exhaustive investigation, and, the completeness of the orders, preclude any thought of the arbitrary, or, of the unreasonable.

XII.

In refusing to hold that the said order, as modified, is null and void because it requires plaintiffs to establish, maintain and apply said joint rates via Galveston, Tex., and the lines of the Mallory Steamship Company.

XIII.

In refusing to hold that the said order, as modified, is null and void because it requires plaintiffs to embrace in the proposed through routes with the lines of the Mallory Steamship Company substantially less than the entire length of their railroads between the termini of such proposed through routes.

XIV.

In refusing to hold that the said order, as modified, is null and void because it requires plaintiffs to establish, maintain and apply the said joint rates via Galveston, Texas, and the lines of the Southern Pacific Company-Atlantic Steamship Lines.

XV.

In refusing to hold that the said order, as modified, is null and void because it requires plaintiffs to embrace in the proposed through routes with the lines of the Southern Pacific Company-Atlantic Steamship Lines substantially less than the entire length of their railroads between the termini of such proposed through routes.

XXII.

In holding that whenever any rail carrier, subject to the Act, enters into an agreement with a water carrier, operating from a port in the United States, the Interstate Commerce Commission may require such railway to enter into similar arrangements with any and all lines of ships operating from the same ports.

XXIII.

In finding on this record that the Morgan Line is owned and controlled by the Southern Pacific Company.

XXIV.

In holding that over the Morgan Line there was, at the time of the entering of the order complained of, an "arrangement" for jointly transporting freight from Oklahoma points to New England by rail and water.

XXV.

In holding that over the Mallory Line there was, at the time of the entering of the order complained of, an "arrangement" for jointly transporting freight from Oklahoma points to New England by rail and water.

VII.

In refusing to hold that there was no competent evidence before the Interstate Commerce Commission to show what the all-rail rates were from and to the said points on, to wit, March 9, 1925, or at the time of its sec-

ond report, or at the time of its first report, or at any time after the date of the hearing.

XVI.

In refusing to hold that the said order, as modified, is null and void and constitutes a taking of the property of plaintiffs, and each of them, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

XVII.

In refusing to hold that the Congress could not empower the Interstate Commerce Commission to make an order requiring plaintiffs to short-haul themselves.

XIX.

In making and entering the decree dismissing the Bill of Complaint for want of equity.

XX.

In denying plaintiff's prayer for a permanent injunction.

XXI.

In refusing to enjoin, set aside, suspend and annul the said order of the Interstate Commerce Commission, as modified.

SUMMARY OF ARGUMENT.

In presenting their contentions against the validity of the Commission's order, appellants did not ask the Court below nor do they ask this Court to consider the weight of the evidence before the Commission, or to substitute its judgment for that of the Commission. It was and is their position that the Commission's action was wholly arbitrary and unsupported by evidence of record, and that the order is beyond the scope of its powers.

Appellants contend that in its consideration of this case the Commission set out to equalize the rail-and-water rates with the all-rail rates, that its order, in substance and in form, is an order entered in the exercise of an assumed power to accomplish such a purpose and that it did not have this power. The Commission has no primary jurisdiction to require that the charges over the rail-and-water routes shall be equalized with the charges over the all-rail routes. Furthermore the complaint before the Commission alleged that the rail-and-water rates were unreasonable and in violation of Section 1 only. There was no question of prejudice or discrimination raised by the complaint or presented by the evidence. The order is broader than the complaint. If it be claimed that the order, superficially considered, is regular on its face and, in form, purports to fix reasonable rates, Courts will look behind the form to the substance, and declare the order void if made to accomplish a purpose not authorized.

If the order is held to be one entered in the exercise of the Commission's power to fix reasonable rates, appellants contend it is arbitrary and baseless, and without supporting evidence.

(a) In fixing the level of the rail-and-water rates, the Commission made allowance for the full amount of the insurance premium on insurance to cover the traffic moving over the rail-and-water routes, and required the establishment of rail-and-water rates 4 cents less than the all-rail rates from and to the same points.

(b) Over the all-rail routes northern Oklahoma points have lower rates and are nearer to destination territory than southern Oklahoma points, while over the rail-and-water routes the northern points have higher rates and are farther from destination territory than the southern points. By relating the rail-and-water rate with the all-rail rate from and to the same points, the Commission required lower rail-and-water rates from the more distant points than it required from the points of lesser distance.

(c) The Commission used the all-rail rate as a measure or standard of reasonableness by which to determine the rail-and-water rate from and to the same points. To justify its action it should have found upon evidence that the all-rail rate was reasonable for the all-rail service and that the transportation conditions over the two routes were equal. The Commission did not make nor would the evidence support such findings.

(d) The order prescribes the "present" all-rail rates as a standard of reasonableness for the corresponding rail-and-water rates. Should "present" all-rail rates, as used in the order, be held to refer to rates as they existed at the time of the first report, or at the time of the order, or at any time subsequent to the hearing, the Commission was seizing upon a standard of reasonableness not in evidence, and the evidence would not show it was proper to use such a standard in constructing rail-and-water rates. If the Commission had informa-

tion from facts not of record that the all-rail rates had been reduced since the hearing, it would not be warranted by the evidence in applying such reduced rates over the rail and water routes. In such case the defendants would be denied the opportunity to show that the conditions which prompted the reductions in the all-rail rates had no relation to or bearing upon the rail-and-water rates.

Appellants further contend that they are required by the order to embrace in the through routes established, substantially less than the entire length of their railroads, respectively, without their consent and contrary to the provisions of Section 15 (4) of the Interstate Commerce Act; that the evidence in this case does not show the boat lines to be subject to the Act; and that the Commission's power under Section 6 (13) was not invoked in this proceeding.

ARGUMENT.

I.

THE ORDER IS VOID BECAUSE THE COMMISSION THEREBY EXERCISED THE POWER TO EQUALIZE RAIL-AND-WATER RATES WITH THE ALL-RAIL RATES AND IT DID NOT POSSESS THIS POWER.

The defendants are required by the original order to establish and *thereafter to maintain* from points in Oklahoma to points in New England territory joint rail-and-water rates which shall not exceed rates 4 cents lower than the present all-rail rates from and to the same points. The character of the power exercised by the Commission is thus manifested at the outset by the requirement that the rail-and-water rate shall be related to the corresponding all-rail rate. A fixed relationship is established in that the spread between the rail-and-water rate and the present all-rail rate from and to the same points shall not be less than 4 cents. The differential of 4 cents is the amount charged by the Insurance Companies as a premium for insurance to cover the risk of transportation by water. By the establishment of this differential the rail-and-water rate plus the insurance premium was made equal, in amount, to the all-rail rate. The route by water and the all-rail route were thereby equalized and this was the basis for rail-and-water rates sought by complainants.

That the Commission set out to equalize the rail-and-water rate with the all-rail rate between the same points is further manifested by the first report in support of the order, and by the evidence of record.

The reports are referred to in the order and are made a part thereof. As its premise, the Commission states the basis for constructing rail-and-water rates which complainants asked for. At page 393 of the first report (R. 30, page 7 in the appendix hereto), the Commission said:

> "Complainants in effect seek *equalization* of the rail-and-water and rail-water-and-rail rates with the all-rail rates by asking us to establish rates by water 4 cents under the all-rail rates to the same destinations. As the water rates are uninsured, they state this *differential* is necessary to pay the cost of insurance." (Italics ours.)

The Commission then discusses the distances and rates over the all-rail routes compared with the distances and rates over the rail-and-water routes, and the contentions of the parties. At page 396 of the first report (R. 32, page 10 in the appendix hereto) it is stated:

> "The Steamship Lines state that a *greater differential* than 4 cents is necessary to attract the traffic, as a movement without transfers has an advantage." (Italics ours.)

In arriving at its conclusions the Commission deals with rail-and-water rates to New England territory and rail-and-water rates to eastern trunk line territory separately. The basis for constructing rail-and-water rates sought by complainants was approved to New England territory and the Commission found (page 398 of the first report, R. 34; page 13 in the appendix hereto) that the rail-and-water rates to New England territory "are, and for the future will be, unreasonable to the extent they exceed or may exceed rates constructed by the deduction of 4 cents from the present all-rail rates." But the Commission refused to approve this basis for constructing rates to eastern trunk line territory because it said (page 398 of the first report, R. 34; page

13 in the appendix hereto) "a different situation exists" in that rail-and-water rates to eastern trunk line territory could not be constructed *on the basis sought*, namely, 4 cents under the all-rail rate, without fourth section relief. At page 398 of the first report (R. 34, page 13 in the appendix hereto) the Commission states:

> "A different situation exists with respect to rates to other points in northeastern United States. Rail-water-and-rail rates to those destinations cannot be constructed *on the basis sought* without fourth-section relief. The rail-water-and-rail rates would have to be lower to points west of New York City to meet the lower all-rail rates to those points, and would result in departures from the long-and-short-haul provision of the act. While not holding that the water-and-rail routes to those points are excessively circuitous, nothing appears of a sufficiently definite nature to justify a finding that the rates themselves are unreasonable or that any *fixed differential* should be established between the rates via the all-rail routes to those applying partly by rail and partly by water. In the absence of such a showing, we cannot compel the carriers to project indefinitely into the interior rail-and-water rates *based on the all-rail rate.*" (Italics ours.)

Complainants sought to have the rail-and-water rates to the entire destination territory equalized with the all-rail rates. To effect equalization they sought a basis for constructing rail-and-water rates which called for the establishment of a fixed relationship with the all-rail rates to both territories.

If complainants, in substance, had asked the Commission to establish rail-and-water rates, reasonable *per se*, and the Commission had exercised its authority to that purpose only, the distinction between rail-and-water rates to New England territory and to eastern trunk line territory could not have been made by the Commission. Whatever evidence there was in the record to show that

the rail-and-water rate from a point in Oklahoma to a point 100 or 200 miles northeast of New York was unreasonable, also condemns the rail-and-water rate from the same point to a point 100 or 200 miles west of New York. This follows because the boat lines run to New York where the cotton may be transferred to cars. The distance from New York to Cambridge, Mass., is 237 miles and the distance from New York to Wilkesbarre is 176 miles. (Exhibit No. 15, R. 147.) The rail-and-water rate from Muskogee, Okla., to Cambridge is $1.915 (Exhibit No. 13, R. 138) and the rail-and-water rate from Muskogee to Wilkesbarre is $2.095. (Exhibit No. 13, R. 140.) There is nothing in the evidence to show why the rail-and-water rate to Wilkesbarre should not be reduced if a reduction is made in the rail-and-water rate to Cambridge. Complainants were as much entitled to reasonable rail-and-water rates to points west and northwest of New York as to points northeast thereof, and if it had been solely a question of rail-and-water rates, reasonable *per se*, there could have been no dissimilarity in the treatment of the two territories. But the question which was uppermost was one of equalization and relationship. The Commission, upon a proper showing, could have fixed reasonable rates to both territories. But it could only equalize the rail-and-water rates to New England territory. The fourth section did not prevent the Commission from establishing reasonable rates to either territory, but it did prevent the Commission from relating the rail-and-water rate to the all-rail rate to eastern trunk line territory so as to equalize the water route with the all-rail route.

Furthermore, an all-rail shipment from Oklahoma to Boston moves in a northeasterly direction. If it is routed rail-and-water, it moves for the first five or six hundred miles by rail to Galveston in a southerly direction. To

New England territory the all-rail rates from northern Oklahoma are less than from southern Oklahoma. On the other hand, to the same territory the rail-and-water rates from northern Oklahoma are in excess of the rail-and-water rates from points farther south. And to Galveston the all-rail rates from northern Oklahoma exceed the all-rail rates from the southern part of the state. This is a normal and logical adjustment.

By prescribing that from and to the same points the rail-and-water rates shall be at least 4 cents under the all-rail rates, the Commission has required that the rail-and-water rates from northern Oklahoma for the longer rail-and-water haul shall be less than the rail-and-water rates for the shorter rail-and-water haul from southern Oklahoma. The lesser rate over the shorter all-rail route is made the basis for the rate over the longer rail-and-water route and the greater rate over the longer all-rail route is made the basis for the rate over the shorter rail-and-water route.

Muskogee is a point in northern Oklahoma and Ardmore a point in southern Oklahoma. Complainants' Exhibit No. 6 (R. 89) shows, among other things, the following rates and distances:

From Muskogee	To Boston		To Galveston	
	Rate	Distance Miles	Rate	Distance Miles
All-rail	$1.625	1655	$1.15	521
Via Galveston	1.915			
Ardmore				
All-rail	$1.695	1832	$1.025	412
Via Galveston	1.79			

The all-rail rate from Enid, a point in northern Oklahoma, to Galveston is $1.215 (Exhibit No. 11, R. 35) as against the rate from Ardmore to Galveston of $1.025.

The order requires a rate of $1.585 over the longer rail-and-water route from Muskogee to Boston and a rate of $1.655 over the shorter rail-and-water route from Ardmore to Boston. The length of the water haul is the same irrespective of origin or destination, but the order requires the defendants to carry a lesser rate over the rail-and-water route having the greater rail mileage and the greater rate over the rail-and water route having the lesser rail mileage. Logically and normally the rail-and-water rate from southern Oklahoma should be less than from northern Oklahoma. This was the adjustment, but in order to effect equalization the Commission has reversed the situation. The obvious and only purpose in establishing such an unusual basis for rail-and-water rates was to place the rail-and-water route on a rate parity with the all-rail route from the same point.

It is inescapable that the Commission did assume it had the power to equalize the rail-and-water with the all-rail rates to New England territory, and that it exercised this assumed authority in entering its order. The Commission, however, did not possess the power to equalize rail-and-water rates with all-rail rates. It has no primary jurisdiction to require the Rock Island and the Frisco to maintain a rate by rail and water on a differential basis under the all-rail rate so that the rail-and-water route may compete for business with the all-rail route. Their equalization from a competitive standpoint is a question of general policy for the carriers. Neither the Commission nor complainants refer to any statutory provision in support of the Commission's action. Section 20 of an Act to provide for the promotion and maintenance of the American Merchant Marine, etc., 1920, 41 Stat. L., 988, provides, among other things, that

it shall be the duty of the United States Shipping Board, in co-operation with the Secretary of War, to investigate territorial regions and zones tributary to ports, taking into consideration the economies of transportation by rail, water and highway and the natural direction of the flow of commerce, and to investigate any other matter that may tend to promote and encourage the use by vessels of ports adequate to care for the freight which would naturally pass through them. It is further provided in this Act that "if after such investigation the Board shall be of the opinion that rates, charges, rules, or regulations of common carriers by rail subject to the jurisdiction of the Interstate Commerce Commission are detrimental to the declared object of this section, or that new rates, charges, rules, or regulations, new or additional port terminal facilities, or affirmative action on the part of such common carriers by rail is necessary to promote the objects of this section, the Board may submit its findings to the Interstate Commerce Commission for such action as such Commission may consider proper under existing law."

This Act did not, of course, add to the primary jurisdiction of the Commission and, so far as the evidence discloses, there were no findings of the Shipping Board submitted to the Commission upon which to act "under existing law."

It may be argued that the order is good because, superficially considered, it appears to be, in form, the exercise of an authority to correct unreasonable rates. But each rail-and-water rate is related by the order to the corresponding all-rail rate. Defendants are required to establish and thereafter to maintain rail-and-water rates which shall not exceed rates 4 cents lower than the present all-rail rates. It requires a spread of not less than

4 cents except that rail-and-water rates less than $1.50 are not required. The order is not, even in form, an order prescribing reasonable rates, *per se*. But if it were, the question is, What was the power which the Commission exercised in making the order? What purpose did the Commission set out to accomplish? An order, regular on its face, is void if made to accomplish a purpose not authorized.

New England Divisions case, 261 U. S. 184, 189.
Southern Pacific Company v. *Interstate Commerce Commission*, 219 U. S. 433, 444.

In *Southern Pacific Company* v. *Interstate Commerce Commission, supra*, the complaint before the Commission alleged that a $5 rate on lumber was unreasonable in and of itself and discriminatory; that a previoulsy existing $3.10 rate was reasonable and that the $3.10 rate had been increased without just cause. The order entered by the Commission directed the railroads to cease charging the $5 rate and fixed as proper rates $3.40 and $3.65. In seeking to enjoin the order the railroads contended, among other things, that the order was in excess of the power conferred upon the Commission, that this is to be determined by substance and not mere form, that although the order may have been couched in a form which would cause it, superficially considered, to appear to be but the exercise of an authority to correct an unreasonable rate, the mere form given by the Commission to its action did not relieve the Courts from the duty of reviewing and correcting an abusive power, and that in entering the order the Commission assumed that it had power to regulate and control the general policy of the carriers as to fixing rates. In declaring the order void the Court said:

> "It is clear, therefore, as we have said at the outset, that the result of the contentions and con-

cessions of the respective parties is to reduce the controversy to a single issue, which is, What was the nature and character of the order made by the Commission? That is, What, in substance, was the power which the Commission exerted in making the order?

Coming to the consideration of that subject, we are of opinion that the court below erred in not restraining the enforcement of the order complained of, because we see no escape from the conclusion that the order was void because it was made in consequence of the assumption by the Commission that it possessed the extreme powers which the railroad companies insist the order plainly manifests." (Page 444.)

"While it is true that the opinion of the Commission may contain some sentences which, when segregated from their context, may give some support to the contention that the order was based upon a consideration merely of the intrinsic unreasonableness of the rate which was condemned, we think when the opinion is considered as a whole in the light of the condition of the record to which we have referred it clearly results that it was based upon the belief by the Commission that it had the right under the law to protect the lumber interests of the Willamette Valley from the consequences which it was deemed would arise from a change of the rate, even if that change was from an unreasonably low rate which had prevailed for some time to a just and reasonable charge for the service rendered for the future." (Page 449.)

In the case at hand complainants were not interested in the level of the rates. They were principally cotton merchants and did not pay the freight charges. Houston, Dallas and Galveston are not on the routes over which this Oklahoma cotton normally moves on its way to eastern trunk line and New England territories. Reasonable rates by way of Galveston and New York, with cost of transfers, insurance premiums, etc., might not be low enough to attract the traffic and divert it from the all-rail route. But rates over the rail-and-water routes

lower than the all-rail rates by an amount equal to the Insurance Company's premium on insurance would place the two on a parity. That would enable them to bring Oklahoma cotton into Galveston, Houston or Dallas and thereafter dispose of it in the northeast on an equal basis with the cotton that moved all-rail. In effect, they asked the Commission to equalize the rail-and-water route with the all-rail route, just as the Commission has stated. This request occupied the consideration of the case by the Commission. The Commission found it could equalize rail-and-water rates with the all-rail rates to New England, and required that rates to such points should be constructed on the basis sought by complainants. But it did not disturb the rail-and-water rates to eastern trunk line territory because to such points equalization could not be effected on account of the provisions of the fourth section. If the Commission had been exerting its power to fix rates reasonable *per se*, the fourth section would not have been an obstacle and the rates to both territories would have remained as they were, or, if altered, they would have been reduced to the same general level.

It is patent that the Commission assumed it had the power to equalize the rail-and-water with the all-rail rates, and that it entered its order in the exercise of that power.

If it be said that the Commission has the power to equalize rail-and-water rates with all-rail rates, such as was here exercised, which we earnestly deny, its jurisdiction to that end was not invoked in this case.

Section 13 of the Interstate Commerce Act provides that any person complaining of anything done or omitted to be done by any common carrier may apply to the Commission by petition, which shall briefly state the facts.

A statement of the complaint thus made is thereupon to be forwarded by the Commission to the carrier. If the complaint is not satisfied the Commission is required to investigate the matters complained of. Paragraph 1 of Section 15 provides that, after full hearing, upon a complaint made as provided in Section 13, or after full hearing, under an order for investigation and hearing by the Commission on its own initiative, the Commission may determine and prescribe, etc. And it is provided in Paragraph 3 of Section 15 that the Commission may and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint rates, etc. The Commission acquired jurisdiction in this proceeding by the filing of a formal complaint. In that complaint it is alleged that the rail-and-water rates are unreasonable in violation of Section 1 of the Interstate Commerce Act, and complainants pray for reasonable joint rates, invoking Section 15 for that purpose. No other provisions of the Act are relied upon. Violations of Sections 2 or 3 were not alleged. No complaint is made of undue prejudice or unjust discrimination. There was no issue raised by the complaint which called upon the Commission to determine relationships or to establish fixed differentials or to equalize different routes. The question for determination related to reasonable joint rates. As the order was entered in the exercise of the power to effect equalization, it is broader than the complaint and is void for that reason.

Oregon R. R. & N. Co. v. *Fairchild,* 224 U. S. 510.

Alton & So. R. R. Co. v. *Com. Com.* 316 Ill. 625.

In the Fairchild case, *supra,* an order of the Wash-

ington Railroad Commission requiring a track connection was under attack. The defendant insisted that it could not anticipate what questions the Commission would determine and that the statute preventing the Court from receiving testimony tending to prove any public necessity for the track connection was unconstitutional. At page 526 the Court said:

> "The complaint alleged that some of the towns were important shipping points and that at all of them there was a public necessity that the roads be connected. The defendant denied each of these allegations. The hearing, both on the law and the facts, was necessarily limited to that issue. There could have been no valid order which was broader than that claim."

In the Illinois case, *supra,* the Court considered an order of the Illinois Commerce Commission reducing rates on coal. It was contended that the findings and order of the Commission went beyond the allegations and prayer of the complaint. Section 64 of Chapter 111⅔ of the statutes of Illinois relating to public utilities, requires that all investigations by the Commerce Commission with reference to the regulation of rates must be based upon a complaint in writing, either originating from the Commission itself or from some interested party. In reversing the order of the Illinois Commerce Commission the Court, at page 630, said:

> "The Commerce Commission cannot enter a valid order which is broader than the written complaint filed in the case."

The complaint before the Commission in the case at bar alleged only that the rail-and-water rates were unreasonable and the prayer was for reasonable joint rail-and-water rates. There was no effort made to amend the complaint and it was not amended except to invoke Section 15 of the Act.

II.

IF THE ORDER WAS ENTERED IN PURSUANCE OF THE COMMISSION'S POWER TO FIX REASONABLE RATES, IT IS WITHOUT SUPPORTING EVIDENCE AND WAS ARBITRARY ACTION.

An order of the Commission fixing rates, if unsupported by evidence, is clearly invalid.

New England Division's Case, 261 U. S. 184, 203.

Florida East Coast Ry. Co. v. *United States,* 234 U. S. 167.

To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action.

Chicago Junction Case, 264 U. S. 258, 265.

An order, regular on its face, may be set aside if the Commission acted so arbitrarily or unjustly as to fix rates contrary to evidence or without evidence to support it.

I. C. C. v. *Union Pacific,* 222 U. S. 541, 547.

A finding without evidence is arbitrary and baseless. The Courts will not review the Commission's conclusions of fact by passing upon the credibility of witnesses, or conflicts in the testimony, but the legal effect of evidence is a question of law.

I. C. C. v. *L. & N.,* 227 U. S. 88, 91, 92.

(a) The action of the Commission in making the rail-and-water rates 4 cents less than the all-rail rates was arbitrary and baseless.

Complainants asked that each rail-and-water rate be made 4 cents less than the corresponding all-rail rate

because, as complainants' witness testified, it was estimated that the insurance premium amounted to 4 cents per 100 pounds. (R. 57.) In its opinion, the Commission, as a premise to its consideration of the case, states that complainants asked for rail-and-water rates 4 cents under the all-rail rates because complainants say this differential is necessary to pay the cost of insurance. It is clear that the 4-cent differential was prescribed because that amount was thought to represent the Insurance Company's premium for insurance, and on the theory that the insurance premium represents the proper difference that should be maintained between the rate applicable to a shipment moving rail-and-water and the rate applicable if the shipment moved to the same destination all rail.

There is no testimony to show the extent of the risk covered by the insurance which costs 4 cents. From all that appears in this record insurance costing 4 cents may cover a risk more extensive than is represented by the difference between carrier liability when a shipment moves all-rail and when it moves rail-and-water. In that event, by the greatest refinement in reason, it would not be an element to be considered in determining reasonable rates. But if it were, it is arbitrary and unlawful to make a rail-and-water rate under the all-rail rate in a specific amount said to represent, not the reasonable value of insurance, but the amount which the insurance company sees fit to charge. If the insurance premium had been 8 or 12 cents, the Commission would have required rail and-water rates 8 or 12 cents under the all-rail rates. On such a theory, the measure of the rail-and-water rate would be at all times in the hands of the insurance companies. There was no witness qualified to

testify as to the reasonable value of water insurance, and no attempt made to so testify.

Furthermore, the insurance premium is based upon the value of the commodity insured. It is so much per $100 valuation. It is common knowledge that there is a wide spread in the market price of cotton from month to month and year to year. It has been 6 cents per pound and it has been 20 cents per pound. Whether the present order is based on 20-cent cotton or 6-cent cotton does not appear of record. The rail-and-water rate, however, will be the same irrespective of the varying cost of insurance. Such an adjustment of rates is without precedent. The principle employed in constructing them cannot be justified.

(b) It was arbitrary action to fix the rail-and-water rates from each point in Oklahoma the same differential under the corresponding all-rail rates.

This is at once apparent. Galveston is south of Oklahoma. The all-rail movement is to the north or northeast. Beginning at a point in northern Oklahoma, the all-rail distance increases and the rail-and-water distance decreases as you go south. We have shown heretofore that the all-rail rates are less from points in northern Oklahoma than they are from points in the southern part of the state, that rates to Galveston from points in southern Oklahoma are less than those from points farther north, and that the rail-and-water rates are less from southern Oklahoma than from points north thereof. By the Commission's order, this logical adjustment of rates is reversed. In requiring that each rail-and-water rate shall bear the same relation to the corresponding all-rail rate, the Commission has established a rate from a point on the southern bor-

der of Oklahoma over the shorter rail-and-water route that is in excess of the rate it has prescribed from a northern point over the longer rail-and-water route. The southern point has a rail-and-water rate as much higher than the rail-and-water rate from the northern point as the all-rail rate from the northern point is less than the all-rail rate from the southern point.

As we have shown heretofore, the spread between the all-rail rates to Boston from Muskogee, a northern point, and Ardmore, a southern point, is 7 cents, Muskogee having the lesser all-rail rate. Muskogee also has a higher rail-and-water rate to Boston than applies from Ardmore. Under the provisions of the order, except as modified by the amendment of April 29, 1925, providing that the defendants shall not be required to establish rail-and-water rates lower than $1.50 per 100 pounds, Muskogee, with its greater rail-and-water distance, is given a rail-and-water rate based upon its lesser all-rail distance, and Ardmore, with its lesser rail-and-water distance, is given a rail-and-water rate based upon its greater all-rail distance. There was no evidence before the Commission which warranted any such adjustment of rail-and-water rates.

Complainants' Exhibit No. 6 (R. 89) shows the all-rail rates and the rail-and-water rates from representative Oklahoma points to representative destination points. The lowest all-rail rate to points in New England territory shown on this exhibit is $1.545. They average around $1.695. On the basis of the rates shown, and these are the rates in evidence, the amendment of April 29, 1925, did not modify the requirement of the order that the rail-and-water rate from the northern point should be at least 4 cents less than the all-rail rate from that point and that the rail-and-water rate from the

southern point should be at least 4 cents less than the all-rail rate from that point.

The order of April 29, 1925, modifying the original order, recites that "upon further consideration of the record in the above-entitled proceeding, and of defendants' petition for modification, and consent of complainants thereto: It is ordered," etc. "Defendants' petition" unquestionably refers to the petition filed by Mallory Steamship Company and Southern Pacific Company-Atlantic Steamship Lines, dated April 2, 1925. (R. 168.) The Rock Island and the Frisco were not parties thereto. By the petition the boat lines sought to have the Commission modify its order by granting fourth section relief or by inserting therein a provision to the effect that the maximum Texas common point rate of $1.50 might be held as a minimum from Oklahoma. The reasons for this request are stated in the petition, but the Commission did not have a hearing thereon.

Apparently the amendment to the original order was an attempt by the Commission to fit the scheme of its order into a rate situation that had been changed since the hearing. At the time it amended its original order the Commission must have concluded from the statements in the petition, unsupported by evidence, or from other information not disclosed by the evidence, such as new tariffs coming to its notice, that the all-rail rates had been reduced since the hearing and that in view of such reductions the rail-and-water rates from Oklahoma should not be required to be lower than the rail-and-water rate of $1.50 from Texas. What may have been in the Commission's mind, in view of the silence of the record, is left purely to surmise. There is no evidence in this record to support rail-and-water rates from any point in Oklahoma as low as $1.50 per 100 pounds.

Under the terms of the original order lower rail-and-water rates are required from northern Oklahoma than from southern Oklahoma points. As amended, this requirement is still in effect, except that if there are any all-rail rates less than $1.54, the rail-and-water rates from the same points shall not be less than $1.50. If there are all-rail rates from southern Oklahoma higher than $1.54, the order would still require lower rail-and-water rates from northern Oklahoma than from points in the southern part of the state. At best the Commission's plan would require the application of the $1.50 rate from almost every point in the state of Oklahoma, certainly from all points in the eastern two-thirds of the state, if the all-rail rates from southern Oklahoma were $1.54 or less. The evidence does not support the Commission in such a requirement.

(c) The evidence of record does not show that the rail-and-water rates are unreasonable, nor does it show that the rail-and-water rates prescribed by the Commission are reasonable rates.

The Commission, by its order, establishes the same rate over the rail-and-water route as applied over the all-rail route from and to the same points, except that the rail-and-water rate was made less than the corresponding all-rail rate by an amount equal to the cost of insurance over the water route. This could only have been done upon the assumption that the all-rail rates were reasonable for the all-rail service and that the transportation conditions, including the cost of service, over the all-rail routes and the rail-and-water routes were identical.

There was no evidence to show that the all-rail rates were reasonable. They are any quantity rates. The

rate on cotton from Muskogee to Boston all-rail of $1.625 per 100 pounds applies to a shipment consisting of one bale or fifty bales. It was testified by a witness for the defendants that cotton is rated first class in the classification, that, however, the commodity rates on cotton were substantially lower than the fourth-class rates and that they were approximately on the same level as the class B rates, the third carload classification. (R. 72.) No attempt was made by complainants to show by evidence that the all-rail rates were reasonable for the rail service. The record does not contain rates on other commodities with which the rail rates on cotton might be compared. If any conclusion can be drawn as to the level of the all-rail rates it is that they are on a subnormal basis. The Commission, in its opinion, did not discuss any evidence tending to show, nor did it find, that the all-rail rates were reasonable. It said (R. 34, page 12 of the appendix) no contention was made by the defendants that the all-rail rates are not on a proper basis. It further said that it would appear water rates on cotton from Oklahoma to New England territory should be lower than the all-rail rates, and that the policy of the law is to promote, encourage and develop water transportation. We submit that this does not justify the Commission in using the all-rail rates as a measure or standard of reasonableness in prescribing the rail-and-water rate. But the Commission is in error in stating no contention was made by the defendants that the all-rail rates were not on a proper basis. The testimony of the defendants heretofore mentioned is to the contrary.

Complainants did not offer, and the testimony does not show, any facts by which to compare the transportation conditions on the all-rail routes with the transportation conditions on the rail-and-water routes. The

record does not afford an opportunity to compare the cost of service over the one route with the cost of service over the other, except in so far as distance permits such a comparison. The all-rail distance from southern Oklahoma to Boston is some 1,800 or 1,900 miles. The distance from Galveston to New York by boat is 2,180 miles. (R. 89.) It is approximately 500 miles from southern Oklahoma to Galveston (R. 31) and 237 miles from New York to Cambridge, all-rail. (Ex. 15, R. 147.)

Complainants compute the distance over the rail-and-water routes by arbitrarily assuming three water miles to be equivalent to one rail mile. The distance from Galveston to New York is thus assumed to be 727 miles. Two cases before the Commission were mentioned as a precedent for the 3-to-1 ratio, but no attempt was made to justify the propriety of its application in fixing rates in this case. In its opinion the Commission cites a case in which a similar basis for constructive mileage was used for the purposes of that case, but it did not say, nor does the evidence show, that three water miles should be held to be equal to one rail mile in the transportation of cotton over rail-and-water routes from Oklahoma to New England territory. The evidence did not enable the Commission to compare the transportation conditions and cost of service over the rail portions of the rail-and-water routes with the transportation conditions and cost of service all rail.

In order to justify its action in using the all-rail rate as a measure or standard of reasonableness for the rail-and-water rate the evidence should show, and the Commission should have found, that the all-rail rate was reasonable for the rail service and that the transportation conditions over the two routes, including the cost of service and the other elements necessary to be con-

sidered, were equal. The Commission did not make, nor would the evidence support, such findings.

(d) It was arbitrary action to prescribe the "present" all-rail rate as a standard of reasonableness upon which to base the rail-and-water rate.

The hearing in this case before the Commission was held in April, 1922. (R. 55.) The rates in evidence are the rates as they existed immediately prior to January 1, 1922. (R. 56.) The first and second reports were handed down in January and November, 1924, respectively. (R. 29, 35.) The order was entered on March 9, 1925. (R. 6.) It was amended on April 29, 1925 (R. 9), so as not to require rail-and-water rates lower than $1.50 per hundred pounds.

The order is ambiguous in prescribing the "present" all-rail rates as base rates. In its first report the Commission finds that the rail-and-water rates are and will be unreasonable to the extent they exceed or may exceed rates constructed by the deduction of 4 cents from the "present" all-rail rates. This was over a year and a half after the hearing. In the second report, ten months later, the original findings were affirmed. The order, entered about three years after the hearing and a year and a half after the first report, requires rail-and-water rates which shall not exceed rates 4 cents lower than the "present" all-rail rate. By its terms the reports were referred to and made a part thereof. The all-rail rates as of December 31, 1921, are the rates shown of record.

If by "present all-rail rates" it was intended to name rates other than those shown of record, the order is clearly void as an order fixing reasonable rates. The level of the all-rail rates, or any one of them, at the

time of the first report, or at the time of the second report, or when the order was entered, was not disclosed by the evidence. The record does not inform the Commission that there has been any change in the level since the hearing. The Commission, in its opinion, speaks of reductions in the all-rail and rail-and-water rates that were made in July, 1923. This was prior to the order but more than a year after the hearing, when the record was closed. Some such facts, occurring after the hearing and not in evidence, presumably induced the Commission to modify the order so as not to require rail-and-water rates lower than $1.50 per 100 pounds.

The "present" all-rail rate is held by the Commission to be a standard of reasonableness by which it determined reasonable rates over the rail-and-water routes. If "present" refers to the all-rail rates as they existed at the time of the first report, or at any time after the hearing, the Commission was seizing upon a standard of reasonableness not in evidence and the evidence would not show that it was proper to use such a standard in constructing rail-and-water rates. It does not follow that because the all-rail rates were reduced after the hearing, the rail-and-water rates should receive the same treatment. No evidence in this record pertaining to reasonable rates could be said to have that effect. Conditions which induced reductions in the all-rail rates might have no bearing whatever on what the level of the rail-and-water rates should be. In requiring that rail-and-water rates shall be based on all-rail rates reduced since the hearing, not only was the Commission not advised by the record as to the extent of the reductions but the defendants were denied an opportunity to show that conditions which might warrant reductions in the all-rail rates did not justify reductions in the rail-and-water rates.

All parties must be fully apprised of the evidence submitted, or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal.

I. C. C. v. *L. & N. R. R. Co.* 227 U. S. 88, 93.

Nothing can be treated as evidence which is not introduced as such.

U S. v. *Abilene & Sou. Ry.* 265 U. S. 274, 288.

Facts conceivably known to the Commission but not put in evidence will not support an order.

Chicago Junction Case, 264 U. S. 258, 263.

III.

THE ORDER IS VOID BECAUSE IT RESULTS IN SHORT-HAULING THE ROCK ISLAND AND THE FRISCO CONTRARY TO THE PROVISIONS OF PARAGRAPH 4 OF SECTION 15 OF THE INTERSTATE COMMERCE ACT.

The lines of the Rock Island and the Frisco are so located that they receive a long haul on Oklahoma traffic moving to New England territory, all rail, and a short haul on the same traffic moved from and to the same points, rail and water. The Commission in its opinion says that the law now authorizes it to require the establishment of through rail-and-water routes and joint rates which may short-haul a rail carrier.

The order requires the defendants to maintain joint rates with Mallory Steamship Company and Southern Pacific Company-Atlantic Steamship Lines, hereinafter referred to as the Mallory Line and the Morgan Line, respectively. Paragraph 4 of Section 15 provides that a rail carrier shall not be required to short-haul itself except where one of the carriers is a water line. It

is our position that this exception does not apply here and that the Commission may not enter an order short-hauling a rail carrier unless the water line is a common carrier subject to the act. Section 1 of the Interstate Commerce Act provides, among other things:

> "(1) That the provisions of this Act shall apply to common carriers engaged in—
>
> (a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; * * *"

Thus every railroad engaged in interstate transportation of property as a common carrier for hire is a common carrier subject to the Act. But not every water line is subject to the Act. Unless the water line and the rail line are used under a common control or management, the water line must be used with the rail line under some arrangement for a continuous carriage or shipment to come under the provisions of the Act.

Section 1 further provides that whenever the word carrier is used in the Act it shall be held to mean "common carrier" (3) and that the term "common carrier" as used in the Act shall include all persons engaged in "such transportation" as aforesaid as common carriers for hire. (3) A water line is thus subject to the Act when engaged in "such transportation," namely, transportation partly by railroad and partly by water when both are used under a common control or management, or under some arrangement for a continuous carriage or shipment.

There is no evidence in this record to show that either the Mallory Line or the Morgan Line was used with a rail line under arrangement for a continuous carriage or shipment. The Commission did not so find nor did it predicate its jurisdiction on any such arrangement. It

is provided in Section 25 (5) of the Act that "the issuance of a through bill of lading covering shipments provided for herein shall not be held to constitute 'an arrangement for continuous carriage or shipment' within the meaning of this Act." And Section 1 (2) (c) provides that absorption by a water carrier in interstate or foreign commerce, out of its port-to-port rates, or out of its through proportional rates, of any switching or other charges of a rail carrier does not suffice to subject it to the Act. The District Court states in its opinion that over both the Mallory Line and the Morgan Line there was an arrangement for jointly transporting freight from Oklahoma points to New England by rail and water. There is no support in law and under the facts of record for this statement.

In its second report the Commission says that the Mallory Line is not under the control or management of any rail carrier but that the Morgan Line is under the control of the Southern Pacific Company and the opinion of the District Court states that the Morgan Line is owned and controlled by the same company. We submit that these statements about the Morgan Line are not supported by the facts in evidence. But if they were supported by evidence, the fact that the Morgan Line is under the control of the Southern Pacific Company is not sufficient. It was not shown that the Southern Pacific Company has any rails in Oklahoma or Texas, or that it serves Galveston. It was not shown that the Southern Pacific Company would participate in the transportation of cotton by rail-and-water from Oklahoma to New England territory. Unless these facts were established it would not be shown that the Morgan Line was engaged in transportation "partly by railroad and partly by water when both are used under a common control, management,"—

The effect of the order is to establish through routes which short-haul the Rock Island and the Frisco. Such an order is prohibited by Section 15 (4), with certain exceptions, and the record does not show that these exceptions apply.

It may not be said that through routes already existed because cotton might move from Oklahoma to New York through Galveston and pay the combination of rates on Galveston. If there is a through route because of a combination of rates it must be a combination the factors of which are on file with the Commission. Water lines are not required to publish their port-to-port rates. Interstate Commerce Act, Section 1 (2) (c). The evidence does not show that the rates of the Mallory Line or the Morgan Line are on file with the Commission.

IV.

THE ORDER IS VOID AS AN ORDER PREDICATED UPON THE PROVISIONS OF SECTION 6 (13) OF THE INTERSTATE COMMERCE ACT.

In its second report which by the terms of the order is referred to and made a part thereof, the Commission relies upon Section 6 (13) as its authority to require the defendants to establish through routes and maximum joint rates between and over the rail-and-water lines. The provisions of paragraph (13) became a part of Section 6 by the terms of Section 11 of the Panama Canal Act, August 24, 1912. 37 Stat. 560. We believe that the word "carriers" in paragraph 13 is not used in a different sense from that declared generally in Section 1 and that paragraph (13) was not intended to give the Commission jurisdiction over carriers over which it did not then have jurisdiction under the provisions of

Section 1. The Commission in the second report states its conclusion to the contrary. In this the Commission erred. And it also erred in assuming that it had authority in this case under the provisions of Section 6 (13) to establish through routes and maximum joint rates between and over the rail and water lines.

As we stated above, paragraph (13) was added to Section 6 by the provisions of Section 11 of the Panama Canal Act of 1912. Section 11 of the Panama Canal Act further provides that "the orders of the Interstate Commerce Commission relating to this section shall only be made upon formal complaint or in proceedings instituted by the Commission of its own motion and after full hearing." The complaint before the Commission alleged that the rail-and-water rates of the defendants were unreasonable in violation of Section 1. The prayer of the complaint was for reasonable joint rates and the provisions of Section 15 of the Act were expressly invoked by complainants for this purpose. (R. 56.) There is no formal complaint in this case which invoked the exercise of the Commission's authority under Section 6 (13). Neither were proceedings instituted by the Commission of its own motion. There is neither a formal complaint nor an order for investigation on the Commission's own motion to justify the exercise of authority under Section 6, (13). The Commission has heretofore refused to enter orders in the exercise of authority not invoked. In *Maritime Asso., Boston Chamber of Commerce* v. *A. A. R. R. Co.* 95 I. C. C. 539, the Commission refused to exercise its power to fix minimum rates because the complainants did not invoke the exercise of that power. At page 573 of its opinion the Commission said:

"The situation is one which might be corrected

> by the exercise of our power to fix minimum rates granted by the transportation act, 1920. But complainants have not invoked the exercise of this power. Under the circumstances we are driven to the conclusion that there is no finding which we can make which can serve as a basis for an order in this proceeding."

An order in this case under the provisions of Section 6 (13) is broader than the complaint and is void.

Oregon R. R. & N. Co. v. *Fairchild*, 224 U. S. 510.

Alton & So. R. R. Co. v. *Com. Com.* 316 Ill. 625.

When the exercise of specific authority is not invoked, an order based upon such authority is not made "after full hearing." At the time the testimony in the case at hand was taken the provisions of Section 6 (13) were not mentioned and no attempt was made to submit facts which might or might not warrant the Commission in exercising its power under this section.

Conclusion.

The Commission's order was entered in exercise of a power it did not possess. It has no primary jurisdiction to effect equalization of the charges over the rail-and-water routes with the charges over the all-rail routes. The order, as an order fixing reasonable rates, has no support on the record and is arbitrary action. The Commission thereby denies to appellants their long haul, and it was without jurisdiction to require the establishment of joint rates with the boat lines. The District Court should have enjoined the enforcement of the order and set it aside. For the reasons heretofore discussed the judgment and decree of the District Court, denying the relief prayed for by appellants and dismissing their

bill of complaint, should be reversed and the case remanded with directions to grant their prayer for relief.

Respectfully submitted,

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W. F. Dickinson,
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Counsel for Appellants.

APPENDIX.

OPINION OF THE DISTRICT COURT, N. D. TEXAS, DALLAS DIVISION. JUNE 8, 1925.

(Title omitted)

Before FOSTER, *Circuit Judge*, and ESTES and ATWELL, *District Judges*.

ATWELL, *District Judge*. The bill seeks an interlocutory restraining order, and the writer called to his assistance Circuit Judge FOSTER and District Judge ESTES. Under the amendment to the Judiciary Act of February 13, 1925 (43 Stat. 936), it is necessary that the cause on its merits must be tried before three judges; therefore all counsel during the hearing agreed that the hearing should be considered as a hearing on the merits. The record made before the Interstate Commerce Commission was introduced. There were some additions to that testimony.

Complaint is made because the order of the Interstate Commerce Commission to use the all rail rate from Oklahoma to New England points as a relating rate for the promulgation of a rail, water, and rail rate between the same termini; that is to say, the Commission found that it would cost 4 cents to insure the part water rate, and it therefore ordered the same rate for rail, water, and rail as for all rail, less 4 cents. It is maintained that this is not the fixing of a reasonable rate in the manner and form authorized by the law, and that there was no sufficient evidence before the Commission to ascertain whether the all rail rate was a reasonable rate, and also to ascertain whether the rail, water, and rail rate would be reasonable; therefore that the rate ordered is arbitrary and unjustifiable. It is also maintained that the Commission was without power to fix a rate partly by rail and partly by water.

(1) 1. The Interstate Commerce Act (Act Feb.

4, 1887, amended June 29, 1906, April 13, 1908, June 18, 1910, May 29, 1917, Aug. 10, 1917, and Feb. 28, 1920) applies to common carriers engaged in "the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment." Section 1, par. 1, subdivision A (Comp. St. Ann. Supp. 1923, § 8563).

A part of paragraph 3 of Section 15 of the act (Comp. St. Ann. Supp. 1923, § 8583) reads as follows: "The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line."

Paragraph 13 of section 6 (Comp St. Ann. Supp. 1923, § 8569) provides: "When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single state, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the act to regulate commerce, as amended June 18, 1910."

Then follow subdivisions (a), (b), (c), and (d), which authorize the Commission to establish physical connection between lines of a rail carrier and a dock; to establish through routes and maximum

joint rates between and over such rail and water lines; to establish proportional rates or maximum or minimum, or maximum and minimum, proportional rates for such rail and water carriers; and when any rail carrier, subject to the act, enters into arrangement with any water carrier, operating from a port in the United States, the Commission may require such railway to enter into similar arrangements with any and all other lines of ships operating from the same port.

Subdivision 4 of section 15 (Comp. St. Ann. Supp. 1923, § 8583) provides: "In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line), require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad. * * *"

Section 500 of the Transportation Act of 1920 (Comp. St. Ann. Supp. 1923, § 10071-1/4k) reads in part as follows: "It is hereby declared to be the policy of Congress to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation."

The Morgan Line is owned and controlled by the Southern Pacific Railway; the Mallory Line is an independent concern. Over both of these lines there was, at the time of the entering of the order which is complained of, an "arrangement" for jointly transporting freight from Oklahoma points to New England by rail and water; that is, there were established rates for such service. These excerpts from the law, though not claimed to be exhaustive, and this suggestion from the evidence, seem to justify the Commission in taking jurisdiction.

(2) 2. The record that was before the Interstate Commerce Commission shows that certain Cotton Exchanges and Boards of Trade "complained" to the Commission in the year 1921, and sought a cotton and linters rate partly by rail and partly by water from Oklahoma to the northeastern part of the United States and eastern Canada. The complaint, after answers, was set for hearing early in

1922 before an examiner. Upon the examiner's report a hearing was had before the Interstate Commerce Commission. The complainants were successful only in the securing of a rate from Oklahoma to New England territory. The order of the Commission provided that the defendants, including the plaintiffs here, "should establish joint rail and water and rail, water, and rail rates on cotton from Oklahoma points to points in New England territory; that the existing rates for such transportation are, and for the future will be, unreasonable to the extent they exceed, or may exceed, rates constructed by the deduction of 4 cents from the present all rail rates," and "that the rail and water and the rail, water, and rail rates on cotton from Oklahoma points to other points in the northeastern portion of the United States are not unreasonable." This is the order of the Commission entered.

A rehearing was asked, in which substantially the same points were presented as are presented in this case. In May, 1924, the Commission denied the petition for rehearing, but it allowed further oral argument in July of the same year. In March, 1925, the Commission issued the order complained of. This was followed by assisting orders on March 28, 1925, and April 29, 1925. The order is effective June 15, 1925.

There were approximately 80 railways cited to appear and included in the order, as well as several steamship lines, including the Morgan and Mallory Lines. The proceeding was quite within the jurisdiction of the Commission, and its carefulness and exhaustive investigation, and the completeness of the orders issued by it, preclude any thought of the arbitrary or of the unreasonable. If that be true, the courts have no power to interfere. *Seaboard Air Line Co.* v. *U. S.*, 254 U. S. 57, 41 S. Ct. 24, 65 L. Ed. 129; *Manufacturers' Railway Co.* v. *U. S.*, 246 U. S. 457, 38 S. Ct. 383, 62 L. Ed. 831; *New England Divisions Case*, 261 U. S. 184, 43 S. Ct. 270, 67 L. Ed. 605; *United States* v. *New River Co.*, 265 U. S. 533, 44 S. Ct. 610, 68 L. Ed. 1165.

(3) The criticism that the Commission related the rail and water rate to the all rail rate in

such a way as to be illegal is hardly well taken. The Commission announced a maximum, and allows the carriers, rail, water, and rail, to fix their own rate 4 cents under such maximum, or as much lower as they may wish.

(4) Similarly formless is the suggestion that there should be any immunity of the port to port water carrier, unless such water carrier is controlled by a rail carrier. The entire policy of the law and the exact wording of it preclude such a construction. An "arrangement" is sufficient.

There appearing to us no merit in the bill, the same is dismissed.

No. 13418.

HOUSTON COTTON EXCHANGE & BOARD OF TRADE ET AL *v.* ARCADE & ATTICA RAILROAD CORPORATION ET AL.

Submitted February 26, 1923. *Decided January* 23, 1924.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

Exceptions were filed by complainants to the report proposed by the examiner, and the case was orally argued. Our conclusions differ from those recommended by the examiner.

Complainants are the Houston Cotton Exchange & Board of Trade, Galveston Cotton Exchange & Board of Trade, Galveston Commercial Association, Dallas Cotton Exchange, and the Oklahoma State Cotton Exchange, corporations. They allege that the rail-and-water and rail-water-and-rail rates on cotton from points in Oklahoma through the Texas ports to points in the northeastern portion of the United States and eastern Canada are unjust and unreasonable. We are asked to prescribe reasonable joint rates by way of the Texas ports. Rates will be stated in cents per 100 pounds, and are those in effect immediately prior to January 1, 1922, except where otherwise noted.

Oklahoma is an important cotton State with a normal production of about 1,000,000 bales. Most of the cotton is raised in the southern half of the State. The destination territory includes points in eastern trunk-line and New England territories and in eastern Canada. For the purposes of this report it will be designated as seaboard territory. This territory consumes about 40 to 45 per cent of the cotton used in the United States.

The four important carriers traversing the cotton section of Oklahoma are the Missouri, Kansas &

Texas; the Chicago, Rock Island & Pacific; the St. Louis-San Francisco; and the Santa Fe system, composed of the Atchison, Topeka & Santa Fe, and the Gulf, Colorado & Santa Fe. They will be designated the M. K. & T., the Rock Island, the Frisco, and the Santa Fe, respectively. The principal rail-and-water route to seaboard territory is rail to Galveston and thence to New York by the Mallory Steamship line or the Southern Pacific Company—Atlantic Steamship Lines, hereinafter called the Mallory line and the Morgan line, respectively. The all-rail routes are through St. Louis, Mo., Memphis, Tenn., and other Mississippi River crossings. The Santa Fe and the M. K. & T. reach the river crossings and also Galveston; the Frisco and the Rock Island have direct lines only to the river crossings. While the rates through Texas ports are attacked, the evidence is confined to the rates through Galveston.

No joint rail-and-water rates are in effect on cotton from Oklahoma through Galveston to seaboard territory. To New York, the rate is composed of the local rail rate to Galveston, the port-to-port rate beyond, and a loading charge. To other points in seaboard territory, the rates are made by adding to the New York rate the rail rates beyond. Joint all-rail rates, based originally on the combination of local rates to and from St. Louis, are in effect from Oklahoma to the destination territory. As the result of the various general increases the combinations through the river gateways are now higher than the joint rates. The bulk of the cotton moving, whether all-rail route or rail-and-water route, is compressed in transit at carrier's cost. The rates referred to herein are those applicable to that character of movement.

Complainants in effect seek equalization of the rail-and-water and rail-water-and-rail rates with the all-rail rates by asking us to establish rates by water 4 cents under the all-rail rates to the same destinations. As the water rates are uninsured, they state this differential is necessary to pay the cost of insurance. (Underscore ours.)

In computing the distance from Galveston to New

York, complainants assume 3 water miles to be equivalent to 1 rail mile. On this basis the distance from Galveston to New York, 2,180 miles, is assumed to be equivalent to 727 rail miles. Using this constructive mileage the distances from southern Oklahoma via Galveston to most destinations in seaboard territory are less than the actual distances all rail through St. Louis, although to points in western New York and the Province of Ontario the constructive distances by the water route are somewhat greater.

Taking a point in each county of southern Oklahoma, complainants show the average short-line distance to Galveston to be 493 miles, and to St. Louis 554 miles. From Oklahoma City, Ada, and Chickasha, representative points in the cotton section, the distances to Galveston are 513, 450, and 483 miles, respectively; and to St. Louis 543, 537, and 582 miles, respectively. The distances from St. Louis to New York, Albany, N. Y., Boston, Mass., and Baltimore, Md., as shown of record, are 1,068, 1,030, 1,230, and 935 miles, respectively.

Distances via all-rail routes through St. Louis to representative eastern points are contrasted in the following table, compiled from complainants' exhibits of record, with the constructive distances through Galveston:

From—	To—							
	New York.		Albany.		Boston.		Baltimore.	
	All rail.	Rail and water.	All rail.	Rail and water.	All rail.	Rail and water.	All rail.	Rail and water.
Oklahoma City	1,611	1,240	1,573	1,382	1,773	1,473	1,478	1,428
Chickasha	1,650	1,210	1,612	1,352	1,812	1,443	1,517	1,398
Ada	1,605	1,177	1,567	1,319	1,767	1,410	1,472	1,365

From most Oklahoma points a rate of $1.15 applies to both St. Louis and Galveston; from Galveston to New York the rate by water is 50 cents. The all-rail rate from the Oklahoma points to New York is $1.665; the rail-and-water rate is $1.65. To points west of New York City the all-rail rates are

lower; to practically all of New England a blanket rate of $1.695 applies. While the all-rail and the rail-and-water rates to New York are approximately the same, the rates by water to other points in seaboard territory vary in amounts according to the distance from New York and are higher than the all-rail rates. To the points more distant from New York City the rail-water-and-rail rates reach a maximum of 56 cents above the all-rail rates.

Below are shown the all-rail and the combination rates via Galveston to representative destinations:

From—	To—							
	New York.		Albany.		Boston.		Baltimore.	
	Rail.	Galveston.	Rail.	Galveston.	Rail.	Galveston.	Rail.	Galveston.
Oklahoma City	$1.665	$1.65	$1.595	$1.95	$1.695	$1.915	$1.635	$2.03
Chickasha	1.665	1.65	1.595	1.95	1.695	1.915	1.635	2.03
Ada	1.665	1.65	1.595	1.95	1.695	1.915	1.635	2.03

Other differences exist in favor of the all-rail rates. Unloading charges at Galveston are not included in the rail-water-and-rail rates, but are borne by shippers. The all-rail rates are any-quantity rates. The rail-water-and-rail rates shown above to points other than New York City are subject to a 20,000-pound minimum, evidently due to the requirements of the eastern rail carriers. The less-than-carload rates to these points are from 0.5 to 14.5 cents higher than the carload rates.

Rail-water-and-rail rates on cotton from Texas common points to seaboard territory were voluntarily established in 1921, observing a maximum of 8 cents under the all-rail rates. They were initiated by the Southern Pacific rail line in connection with its boat line. This action on the part of the Southern Pacific was followed by similar action on the part of most of the other Texas carriers. The all-rail rates from Texas common points to seaboard territory are normally 4 cents higher than from Oklahoma. Rail-water-and-rail rates from Oklahoma 4 cents less than the all-rail rates would about equal

the present rail-water-and-rail rates from most Texas common points, although the average rail haul from the latter points to Galveston is probably 200 miles less than from Oklahoma. While joint class and commodity rates are in effect from seaboard territory to Oklahoma via Galveston, only a few joint rail-and-water and rail-water-and-rail rates apply in the opposite direction. Rail-water-and-rail rates, equal to the all-rail rates, are in effect from Oklahoma through the south Atlantic ports to a few points in seaboard territory.

Complainants assert that prior to 1910 or 1911 joint rail-water-and-rail rates 2 cents less than those all rail were in effect from Oklahoma to New York, but that about that time the water rates from Galveston to New York were reduced, resulting in combinations lower than the joint rates. The latter were eventually canceled. The information respecting these joint rates is indefinite and can not be verified. In 1917 or 1918 the rate by water was increased, resulting in the rail-and-water rates becoming higher than the all-rail rates. Under General Order No. 28, the all-rail rates were advanced only 15 cents per 100 pounds, while the 15-cent increase was applied to both factors of the combination rates via Galveston, which further widened the spread between the all-rail and the rail-and-water rates.

The Morgan line and the Mallory line, with their eastern rail connections, are willing to participate in joint rates, and, in fact, attempted to effect their establishment, but the Oklahoma carriers refused to enter into such an arrangement, preferring instead to move the traffic through the river gateways. The steamship lines state that a greater differential than 4 cents is necessary to attract the traffic, as a movement without transfers has an advantage. (Underscore ours.)

The Oklahoma State Cotton Exchange took no active part in the proceeding. The other complainants are cotton exchanges at Dallas, Houston, and Galveston, whose members purchase cotton within Oklahoma. Joint rates applying by way of Texas ports would enable them to better concentrate their business. Cotton growers in Oklahoma desire joint

rates through Texas ports in order to interest buyers there. Other reasons advanced for the joint rates via the Gulf ports are diversity of routes, movement by water more dependable than by rail, and time of arrival more certain.

The burden of the defense was assumed by the Rock Island and the Frisco. Their principal objection to the establishment of joint rates is that it would deprive them of the long haul. Because of the expense incurred in assembling the cotton and other conditions peculiar to that traffic, they contend that the nonapplication of joint rates via the Texas ports is warranted. About 90 per cent of the cotton originates at country points, from which it is moved in small lots to the compresses, an average distance of 60 to 70 miles. This requires a large number of cars, and to conserve equipment compression is ordinarily required at the first compress point. The assembling cost is estimated to be 50 per cent of the total transportation cost of cotton over the Rock Island, for which it receives no extra compensation. In order to be compensated for this expense, the carriers are unwilling for the cotton originating on their lines to move except over routes where they receive the long haul. (Underscore ours.)

Cotton is an important item of traffic to the Oklahoma carriers, from which they receive a large revenue. Fifty per cent of the cotton is for export moving through the Gulf. The majority of the remainder goes to seaboard territory. Thus, the Rock Island and Frisco are denied the long haul on 50 per cent of this traffic. On traffic to the ports, the Rock Island obtains a haul as far as Fort Worth or Dallas, to which the distances from the compress points range from 112 to 388 miles. From the same points to Memphis, the hauls range from 366 to 642 miles; to Chicago 907 to 1,172 miles; and to St. Louis 691 to 956 miles.

Defendants say that the present routes adequately serve the needs of the shippers and that individual shippers in Oklahoma have made no requests for joint rates via the Gulf. Numerous routes are available east of the river gateways, all of which are more direct than through Galveston. Other objec-

tions urged against the establishment of joint rates are that the transfer expense at both ports must be absorbed, and that there is already a heavy cotton movement to Galveston during the fall with an empty-return movement northbound, which the proposed joint rates would increase.

Certain reductions have recently been made in both the all-rail and the combination rates via Galveston from Oklahoma producing points to seaboard territory. For example, the all-rail rates from Oklahoma City, Chickasha, and Ada have been since July 1, 1923, $1.50 to New York, $1.465 to Baltimore, $1.435 to Albany, and $1.535 to Boston. On the same date the rate from the Oklahoma points to Galveston became $1.01. On July 15, 1923, the rate from Galveston to New York was reduced to 35 cents with contemporaneous reductions in the water-and-rail rates to interior seaboard points. As a result of these reductions the combinations on Galveston from the Oklahoma points named are now $1.40 to New York, $1.65 to Baltimore, $1.595 to Albany, and $1.625 to Boston. Included in the latter rates is a loading charge of 4 cents. A 2-cent charge for wharfage is absorbed in the rate. Under the present adjustment there is an advantage of 10 cents in favor of the combination rate via Galveston over the all-rail rate to New York. To the other destinations named the spread between the all-rail rates and rail-water-and-rail rates has been reduced, in the case of Albany from 35.5 cents to 16 cents, at Boston from 22 cents to 9 cents, and at Baltimore from 39.5 cents to 18.5 cents.

In measuring the water haul in terms of rail miles, complainants base their computations upon an equation of 3 miles of water haul to 1 mile by rail. In *Reduced Rates from New York Piers*, 81 I. C. C., 312, we adopted for the purposes of that case the 3 to 1 ratio in determining the constructive mileage in connection with traffic between New York and Galveston. No contention was made by the defendants that the all-rail rates are not on a proper basis. It would appear that the rail-and-water rates on cotton from Oklahoma to New England territory should be lower than the all-rail rates. The policy

of the law is "to promote, encourage, and develop water transportation," and to that end the law now authorizes us to require the establishment of through rail-and-water routes and joint rates which may short-haul a rail carrier.

A different situation exists with respect to rates to other points in northeastern United States. Rail-water-and-rail rates to those destinations can not be constructed on the basis sought without fourth-section relief. The rail-water-and-rail rates would have to be lower to points west of New York City to meet the lower all-rail rates to those points, and would result in departures from the long-and-short-haul provision of the act. While not holding that the water and rail routes to those points are excessively circuitous, nothing appears of a sufficiently definite nature to justify a finding that the rates themselves are unreasonable or that any fixed differential should be established between the rates via the all-rail routes and those applying partly by rail and partly by water. In the absence of such a showing, we can not compel the carriers to project indefinitely into the interior rail-and-water rates based on the all-rail rate. We are also left in doubt by the record whether rail-and-water rates to these destinations are in the public interest. (Underscore ours.)

Upon all the facts of record we are of opinion and find that it is desirable in the public interest that the defendants should establish joint rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to points in New England territory, and that the existing rates for such transportation are, and for the future will be, unreasonable to the extent they exceed or may exceed, rates constructed by the deduction of 4 cents from the present all-rail rates. We further find that the rail-and-water and the rail-water-and-rail rates on cotton from Oklahoma points to other points in the northeastern portion of the United States are not unreasonable. We are without authority to require the establishment of joint through rates to points in Canada.

No order will be entered at this time, but defendants will be expected to comply with our findings within 90 days from the service of our report, failing which the matter may be again brought to our attention.

By the commission, division 4.

GEORGE B. MCGINTY,
Secretary.

(SEAL)

No. 13418

HOUSTON COTTON EXCHANGE & BOARD OF TRADE ET AL. *v.* ARCADE & ATTICA RAILROAD CORPORATION ET AL.

Submitted July 16, 1924. *Decided November* 4, 1924.

REPORT OF THE COMMISSION ON FURTHER ARGUMENT.

BY THE COMMISSION:

In our original report, 87 I. C. C., 392, we found that it was desirable and in the public interest that the defendants should establish joint rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to points in New England territory and that the rates would be unreasonable to the extent that they exceeded rates constructed by the deduction of 4 cents from the all-rail-rates. The principal rail-and-water routes to seaboard territory are rail to Galveston, Tex., thence to New York, N. Y., via the Mallory Steamship Line or the Southern Pacific Company, Atlantic Steamship Lines, hereinafter called the Mallory Line and the Morgan Line, respectively. The all-rail routes are through St. Louis, Mo., Memphis, Tenn., and other Mississippi River crossings. We further found that the rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to other points in the northeastern portion of the United States were not unreasonable. Also that we were without authority to require the establishment of joint through rates to points in Canada. Defendants were expected to comply with our findings within 90 days from the service of our report, failing which the matter might be again brought to our attention. Upon defendants' petition the proceeding was reopened and further oral argument had. This argument was devoted largely to the discussion of the question of our jurisdiction in the premises.

The Mallory Line is not under the control or management of any rail carrier. The Morgan Line

is under the control of the Southern Pacific Company.

Section 1 of the interstate commerce act reads in part as follows:

(1) That the provisions of this Act shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; * * *

(2) The provisions of this Act shall also apply to such transportation * * *, but only in so far as such transportation * * * takes place within the United States.

Section 15 of the act reads in part as follows:

(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charged, (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line. * * *

Section 6 reads in part as follows:

(13) When property may be or is transported from point to point in the United States by rail-and-water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the Act to

regulate commerce, as amended June eighteenth, nineteen hundred and ten:

(a) To establish physical connection between the lines of the rail carrier and the dock * * *.

(b) To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced.

Defendants contend that the portions of sections 15 and 6 quoted above are qualified by section 1 so that they relate to transportation partly by rail and partly by water only when both are used under a common control, management, or arrangement for a continuous carriage or shipment. But this would lead to the absurd conclusion that we are enabled to establish a physical connection at a dock between a rail carrier and a water carrier only where the water carrier already has an arrangement for continuous service with the rail line.

We construe paragraph (13-b) of section 6 to confer upon the commission power to establish through routes and maximum joint rates between and over the rail and water lines and with respect to the transportation referred to in the opening paragraph of paragraph (13) of section 6.

No considerations concerning the merits of the case were advanced upon reargument which are not fully covered by the original report.

Our original findings are affirmed. Defendants will be expected to comply with these findings within 90 days from the service of this report, failing which the matter may be again brought to our attention.

Chairman Hall dissents.

By the commission.

GEORGE B. MCGINTY,
Secretary.

(SEAL)

ORDER.

AT THE GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION, HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 9TH DAY OF MARCH, A. D. 1925.

No. 13418.

(Title Omitted)

It appearing that on January 23, 1924, the Commission entered its report and on November 4, 1924, its report on further argument in the above-entitled proceeding, which said reports are hereby referred to and made a part hereof;

It further appearing that the said report of November 4, 1924, provided for a period of 90 days from the service thereof within which the above-named defendants were expected to comply with the findings of the Commission as set forth in the said report of January 23, 1924;

And it further appearing that the said report of November 4, 1924, was served on the parties on November 11, 1924, and that said defendants have thus far failed to comply with said findings:

It is ordered that the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist on or before April 25, 1925, and (fol. 12) thereafter to abstain from publishing, demanding, or collecting rail-and-water and rail-water-and-rail rates for the transportation of cotton, in carloads, minimum 20,000 pounds, from points in Oklahoma on the lines of defendants as shown on pages 83 to 107 inclusive, of Southwestern Lines' Tariff No. 80-E, F. A. Leland's I. C. C. No. 1467, and in supplements and reissues thereof, via Galveston, Tex., and the lines of defendant Mallory Steamship Company to points in New England territory on the lines of defendants set forth on pages 34 to 43, inclusive, of the said tariff and supplements and reissues thereof, which exceed the rates prescribed in the next succeeding paragraph.

It is further ordered that said defendants, according as they participate in the transportation, be, and they are hereby notified and required to establish, on or before April 25, 1925, upon notice to this commission and to the general public by not less than 5 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of cotton, in carloads, minimum 20,000 pounds from points in Oklahoma above specified, via Galveston, Tex., and the lines of defendant Mallory Steamship Company to points in New England territory above specified joint rail-and-water and rail-water-and-rail rates which shall not exceed rates 4 cents per 100 pounds lower than the present all-rail rates from and to the same points.

It is further ordered that the above-named defendants according as they participate in the transportation, be, and they, are hereby, notified and required to cease and desist on or before April 25, 1925, and thereafter to abstain from publishing, demanding, or collecting rail-and-water and rail-water-and-rail rates for the transportation of cotton in carloads minimum 20,000 pounds, from points in Oklahoma above specified, via Galveston, Tex., and the lines of defendant Southern Pacific Company-Atlantic Steamship Lines, to points in New England territory above specified which exceed the rates prescribed in the next succeeding paragraph.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby notified and required to establish, on or before April 25, 1925, upon notice to this commission and to the general public by not less than 5 days' filing and posting in the manner prescribed in section 6 of the Interstate commerce act, and thereafter to maintain and apply to the transportation of cotton, in carloads, minimum 20,000 pounds, from (fol. 13) points in Oklahoma above specified via Galveston, Tex., and the lines of defendant Southern Pacific Company-Atlantic Steamship Lines, to points in New England Territory above specified joint rail-and-water and rail-water-and-rail rates which shall not exceed rates 4

cents per 100 pounds lower than the present all-rail rates from and to the same points.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the Commission:

GEORGE B. McGINTY,
Secretary.

(SEAL)

ORDER.

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 28TH DAY OF MARCH, A. D. 1925.

No. 13418.

(*Title Omitted*)

Upon further consideration of the record in the above-entitled proceeding, and good cause appearing therefor:

It is ordered, That the order entered in this proceeding on March 9, 1925, be, and it is hereby, modified by eliminating from the fourth, fifth, sixth and seventh paragraphs thereof the following: "in carloads, minimum 20,000 pounds."

It is further ordered, That the said order of March 9, 1925, which was by its terms made effective April 25, 1925, be, and it is hereby, further modified so that it will become effective on May 15, 1925, (fol. 14) instead of on said April 25, 1925; but in all other respects the said order of March 9, 1925, shall remain in full force and effect.

By the Commission:

GEORGE B. McGINTY,
Secretary.

(SEAL)

ORDER.

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION HELD AT ITS OFFICE, IN WASHINGTON D. C., ON THE 29TH DAY OF APRIL, A. D. 1925.

No. 13418.

(*Title Omitted*)

Upon further consideration of the record in the above-entitled proceeding, and of defendants' petition for modification, and consent of complainants thereto:

It is ordered, That the order entered in this proceeding on March 9, 1925, as modified by order entered March 28, 1925, be, and it is hereby, further modified in the fifth and seventh paragraphs by adding immediately at the end thereof, the following:

Provided, however, that in complying with said order defendants shall not be required to establish rail-and-water and rail-water-and-rail rates lower than $1.50 per 100 pounds.

It is further ordered, That the order entered herein on March 9, 1925, as subsequently modified, which was by its terms made effective May 15, 1925, be, and it is hereby, further modified so that it will become effective on June 15, 1925, instead of on said May 15, 1925.

By the Commission:

GEORGE B. McGINTY,
Secretary.

(SEAL)

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 190

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY and ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, appellants

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, HOUSTON COTTON EXCHANGE, et al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES

OPINIONS

The opinion of the District Court (Circuit Judge Foster and District Judges Estes and Atwell) filed on June 17, 1925, is reported as *Chicago, Rock Island & Pacific* v. *United States*, 6 Fed. Rep. (2d) 888 (R. 46).

The two reports and orders of the Commission in controversy are published as *Houston Cotton Exchange* v. *Arcade & Attica Railroad*, 87 I. C. C.

392, January 23, 1924 (R. 27); 93 I. C. C. 268, November 4, 1924 (R. 35). The orders are printed as Appendix A.

JURISDICTION

The suit was commenced and the appeal was taken under Urgent Deficiencies Act (c. 32, 38 Stat. 219, 220) (R. 2).

On June 9, 1925, the final decree dismissing the bill was entered (R. 49) and the appeal was allowed on July 3, 1925 (R. 54).

THE STATUTE

The provisions of the Interstate Commerce Act which control are printed as Appendix B.

QUESTIONS

I. Did the Commission have jurisdiction under the Panama Canal Act to direct rail-and-water and rail-water-and-rail carriers operating over routes from Oklahoma, via Galveston, to New England points to establish joint rail-and-water and rail-water-and-rail rates for the transportation of cotton in carloads, minimum 20,000 pounds, over lines of Mallory Steamship Company and Southern Pacific Company—Atlantic Steamship Lines, not to exceed 4 cents per 100 pounds[1] lower than the then prevailing all-rail rates from and to the same points? (R. 7.)

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[1] The order of the Commission was entered March 9, 1925, and was amended on April 29, 1925, so as not to require rail-and-water and rail-water-and-rail rates lower than $1.50 per 100 pounds. (R. 9.)

II. Is the order without evidence to support it and arbitrary?

STATEMENT

The facts are not seriously in dispute. Oklahoma produces a normal crop of about 1,000,000 bales of cotton largely in the southern part of the State. (R. 30.) Fifty per cent moves through the Gulf for export. The majority of the remainder goes to seaboard territory (R. 33), which includes points in eastern trunk line and New England territories and in eastern Canada. Seaboard territory consumes nearly one-half of the cotton used in the United States. (R. 30.)

Missouri, Kansas & Texas, St. Louis & San Francisco, Atchison, Topeka & Santa Fe and Rock Island railroads serve the Oklahoma cotton section. (R. 30.) The all-rail routes are through St. Louis, Memphis and other Mississippi River crossings. (R. 30.) Missouri, Kansas & Texas and Santa Fe reach both Mississippi River crossings and Galveston, whereas the St. Louis-San Francisco and Rock Island have direct lines to the River crossings only. (R. 30.) The principal rail-and-water route to seaboard territory is rail to Galveston and Mallory Steamship Company (Mallory Line) or Southern Pacific Company-Atlantic Steamship Lines (Morgan Line) to New York. (R. 30.)

No joint rail-and-water rates apply from Oklahoma through Galveston to seaboard territory (R. 30), e. g., the rate to New York is made up of local rate to Galveston, port to port beyond, and a load-

ing charge; to other points, the rates are made by adding to the New York rate the rail rates beyond. (R. 30.) Joint all-rail rates are in effect from Oklahoma to seaboard territory. (R. 30.) The bulk of the cotton moving either way is compressed in transit at carrier's cost. (R. 30.)

In computing the distance from Galveston to New York, and in measuring the water haul in terms of rail miles, the Commission accepted an equation of 3 miles of water haul to 1 mile of rail (*Reduced Rates from New York Piers,* 81 I. C. C. 313). (R. 30, 34.) On that basis the distance from Galveston to New York, 2180 miles, is 727 rail miles. (R. 30.)

On the basis of this constructed mileage, the distances from southern Oklahoma via Galveston to most destinations in seaboard territory are less than the actual distances all-rail through St. Louis, although to points in western New York and in Ontario the constructive distances by the water route are somewhat greater. (R. 30.)

Using the constructed mileage through Galveston, the Commission compiled from exhibits comparative distances via all-rail routes through St. Louis to representative eastern points.

From—	To—							
	New York		Albany		Boston		Baltimore	
	All rail	Rail and water	All rail	Rail and water	All rail	Rail and water	All rail	Rail and water
Oklahoma City	1,611	1,240	1,573	1,382	1,773	1,473	1,478	1,428
Chickasha	1,650	1,210	1,612	1,352	1,812	1,443	1,517	1,398
Ada	1,605	1,177	1,567	1,319	1,767	1,410	1,472	1,365

Similarly the Commission compiled comparative all-rail and combination rail-and-water and rail-water-and-rail rates to representative destinations.

From—	To—							
	New York		Albany		Boston		Baltimore	
	Rail	Galveston	Rail	Galveston	Rail	Galveston	Rail	Galveston
Oklahoma City	$1.665	$1.65	$1.595	$1.95	$1.695	$1.915	$1.635	$2.03
Chickasha	1.665	1.65	1.595	1.95	1.695	1.915	1.635	2.03
Ada	1.665	1.65	1.595	1.95	1.695	1.915	1.635	2.03

The Commission found that joint rates applying by way of Texas ports would enable the complainants better to concentrate their business. (R. 32.) Growers in Oklahoma desired joint rates through Texas ports in order to interest buyers there; other reasons are diversity of routes, movement by water more dependable than by rail, and time of arrival more certain.

Other substantial differences in favor of the all-rail rates are found to exist. (R. 31.) No contention was made by the carriers that the all-rail rates are not on a proper basis. (R. 34.)

Cotton exchanges at Houston, Galveston and Dallas whose members purchase cotton within Oklahoma (R. 32) filed the complaint and alleged the rail-and-water and rail-water-and-rail rates were unjust and unreasonable and prayed for reasonable joint rates *via* Texas ports. (R. 29.) Oklahoma Cotton Exchange, also a complainant, took no part in the hearing. (R. 32.)

The Mallory Line and Morgan Line, with their eastern rail connections, are willing to participate in joint rates, and, in fact, attempted to effect their establishment, but the Oklahoma carriers refused to enter into such an arrangement, preferring to move the traffic through the river gateways. (R. 32.)

In its first report the Commission declined to grant the relief prayed except to New England points. To that extent only the carriers lost the case. The Commission made no order and expressed its expectation that the carriers would comply with the findings. (R. 34.) Instead the carriers secured a reargument. (R. 35.) The Commission reviewed and affirmed its original findings. The carriers failed to comply therewith and the order was then entered. (R. 37.)

The Chicago, Rock Island & Pacific and St. Louis-San Francisco only filed the bill in which they brought before the Court their charges that the Commission was without jurisdiction under the Panama Canal Act and the order was without evidence to support it and arbitrary. The Government answered (R. 37) and after hearing and opinion (H. 46) the specially-constituted District Court dismissed the bill (R. 49).

SUMMARY OF ARGUMENT

I. The order of the Commission is not only authorized by the Panama Canal Act but the Commission had the authority to enter the order after

hearing upon the complaint or upon its own initiative without a complaint (*United States* v. *New York Central Railroad,* No. 284, November 22, 1926).

II. Nor does the Panama Canal Act save to the appellants at all times their long haul (93 I. C. C. 268; *United States* v. *New York Central Railroad, supra; United States* v. *American Railway Express Co.,* 265 U. S. 425).

III. The Commission rested its order on considerations other than an attempt at equalization of the rates by the fixing of a differential of 4 cents at the request of complainants in order to cover insurance.

IV. As the order was limited to New England destinations the appellants have no right to complain that it was not extended to other destinations and should accept the finding—a "different situation exists with respect to rates to points in northeastern United States."

V. Again it was in the appellants' favor that the Commission considered the all-rail rates, made comparisons and took into consideration the relation of the rates via the two routes; otherwise the differential might have been made larger with the result that the appellants' all-rail traffic might have been taken away.

VI. As the order has been in full force and effect for nearly two years without complaint from any

source, the charge that the order is ambiguous would appear to be unfounded.

VII. The modification of the order which permitted publication of the minimum rate of $1.50 was with the consent of F. A. Leland, agent of the Oklahoma carriers, and the charge that the modification was made without notice is likewise unfounded.

ARGUMENT

I

THE COMMISSION HAD JURISDICTION

The Commission found the Mallory Line is not under the control or management of any rail carrier. The Morgan Line is under the control of Southern Pacific. (R. 36.) Both are not only willing to participate in joint rates but attempted to accomplish their establishment. (R. 32.) Neither Missouri, Kansas & Texas nor Santa Fe joined in the bill. The little that was ordered by the Commission was authorized by the Panama Canal Act. (*United States* v. *New York Central Railroad,* No. 284, November 22, 1926.)

Counsel for the appellants further argue that the order will "short haul" the appellants with their traffic on cotton. (Br. 39.) This argument was also rejected in *United States* v. *New York Central Railroad, supra,* and *United States* v. *American Railway Express Co.,* 265 U. S. 425.

II

THE ORDER WAS BASED ON FACTS ABOUT WHICH THERE IS NO DISPUTE

Appellants argue that in attempting to accomplish an equalization of the rates, the Commission fixed a differential of 4 cents at the request of complainants in order to cover insurance. (R. 30.) In their brief (p. 17) counsel say: "The differential of 4 cents is the amount charged by the insurance companies as a premium for insurance to cover the risk of transportation by water. By the establishment of this differential the rail-and-water rate plus the insurance premium was made equal, in amount, to the all-rail rate. The route by water and the all-rail route were thereby equalized and this was the basis for rail-and-water rates sought by complainants."

It is observable that the Commission did not rest its order on such a foundation. On the contrary, it does not appear that the Commission took the subject of insurance seriously into consideration. After reviewing the evidence the Commission found, "Rail-water-and-rail rates from Oklahoma 4 cents less than the all-rail rates would about equal the present rail-water-and-rail rates from most Texas common points, although the average rail haul from the latter points to Galveston is probably 200 miles less than from Oklahoma." (R. 32.) The Commission further found "The steamship lines

state that a greater differential than 4 cents is necessary to attract the traffic, as a movement without transfers has an advantage." (R. 32.) The differential of 4 cents is very small and obviously was based on considerations other than insurance, as pointed out in the Statement.

Counsel for appellants complain that the Commission made an unjustified distinction in granting relief with respect to rates to New England territory and denying relief with respect to rates to other points in northeastern United States. (Br. 18, 19, 20.) Such an argument requires courage. If this Court should affirm the decree of the District Court and appellants should again be brought before the Commission for a further hearing covering the points in northeastern United States to which the rail-water-and-rail rates were not extended, they may find themselves in a precarious situation. In that case they would probably maintain that the Commission's finding (R. 34) set forth in their brief (p. 19) was correct, viz, "A different situation exists with respect to rates to other points in northeastern United States. Rail-water-and-rail rates to those destinations can not be constructed on the basis sought without fourth-section relief."

The Commission pointed out "No contention was made by the defendants that the all-rail rates are not on a proper basis." (R. 34.) If the Commission was without authority to take into account the existing and apparently satisfactory all-rail rates

in establishing rail-water-and-rail rates, what would it have taken into account? The Commission took the only course open and the one of which appellants have the least right to complain. Assume the Commission had disregarded altogether the all-rail rates and established rail-and-water and rail-water-and-rail rates on a basis independently of and disassociated from the all-rail rates and fixed a differential of 10 or 15 cents under the all-rail rates, where would these appellants find themselves? Their traffic would be gone. This Court has held repeatedly, and as late as December 13, 1926, that comparisons of rates are admissible and may constitute substantial evidence upon which to base an order. (*Virginia Railway* v. *United States,* No. 281, December 13, 1926; *New England Divisions Case,* 261 U. S. 184, 203.) The relation of the rates is also a subject for consideration. (*United States* v. *Illinois Central Railroad,* 263 U. S. 515; *Western Paper Makers' Chemical Co.* v. *United States,* 271 U. S. 268.)

Counsel for the appellants argue that "the order is ambiguous in prescribing the 'present' all-rail rates as base rates." (Br. 37.)

By order entered April 29, 1925 (R. 9), the Commission appears to have fixed June 15, 1925, as the effective date of its order. The final decree of the District Court which dismissed the bill was filed June 9, 1925. The order has been in full force and

effect, therefore, for nearly two years. As no complaint from shippers or other interested parties appears to have been made of the manner in which the appellants complied with the order, the alleged ambiguity would appear not to be serious. The charge of ambiguity made in the bill faded before the District Court and the action of the appellants in apparently satisfactorily complying with the order would seem to remove the charge entirely.

Counsel for appellants say (Br. 33) "What may have been in the Commission's mind, in view of the silence of the record, is left purely to surmise. There is no evidence in this record to support rail-and-water rates from any point in Oklahoma as low as $1.50 per 100 pounds." The order of the Commission refers to the tariff in question as Southwestern Lines' Tariff No. 80-E, F. A. Leland's I. C. C. No. 1467. (R. 7.) On April 1, 1925, the same F. A. Leland, who was the joint agent of all of the carriers, sent a telegram to the Secretary of the Commission in which he stated "Oklahoma lines now in session fully concur in petition filed by Morgan and Mallory line for modification of order permitting publication of minimum rate one dollar fifty cents." (R. 172.) Nor would this telegram appear to justify the appellants in maintaining the position that the order of April 29, 1925, was entered without notice to them and without giving them an opportunity to

be heard. (R. 9.) The Commission was not bound to give notice to appellants that they may protect themselves against the acts of their own agent.

CONCLUSION

The decree should be affirmed.

WILLIAM D. MITCHELL,
Solicitor General.

BLACKBURN ESKRIDGE,
Assistant to the Solicitor General.

FEBRUARY, 1927.

Order of March 9, 1925 (R. 6):

It appearing that on January 23, 1924, the Commission entered its report and on November 4, 1924, its report on further argument in the above-entitled proceeding, which said reports are hereby referred to and made a part hereof;

It further appearing that the said report of November 4, 1924, provided for a period of 90 days from the service thereof within which the above-named defendants were expected to comply with the findings of the Commission as set forth in the said report of January 23, 1924;

And it further appearing that the said report of November 4, 1924, was served on the parties on November 11, 1924, and that said defendants have thus far failed to comply with said findings;

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist on or before April 25, 1925, and thereafter to abstain from publishing, demanding, or collecting rail-and-water and rail-water-and-rail rates for the transportation of cotton, in carloads, minimum 20,000 pounds, from points in Oklahoma on the lines of defendants as shown on pages 83 to 107, inclusive, of Southwestern Lines' tariff No. 80-E, F. A. Leland's I. C. C. No. 1467, and in supplements and reissues thereof, via Galveston, Tex., and the lines of defendant Mallory Steamship Company to points in New Eng-

land territory on the lines of defendants set forth on pages 34 to 43, inclusive, of the said tariff and supplements and reissues thereof, which exceed the rates prescribed in the next succeeding paragraph.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby notified and required to establish, on or before April 25, 1925, upon notice to this commission and to the general public by not less than 5 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of cotton, in carloads, minimum 20,000 pounds, from points in Oklahoma above specified, via Galveston, Tex., and the lines of defendant Mallory Steamship Company to points in New England territory above specified joint rail-and-water and rail-water-and-rail rates which shall not exceed rates 4 cents per 100 pounds lower than the present all-rail rates from and to the same points.

It is further ordered, That the above-named defendants according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist on or before April 25, 1925, and thereafter to abstain from publishing, demanding, or collecting rail-and-water and rail-water-and-rail rates for the transportation of cotton in carloads, minimum 20,000 pounds, from points in Oklahoma above specified, via Galveston, Tex., and the lines of defendant Southern Pacific Company–Atlantic Steamship Lines, to points in New England territory above specified which exceed the rates prescribed in the next succeeding paragraph.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby notified and required to establish, on or before April 25, 1925, upon notice to this commission and to the general public by not less than 5 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply to the transportation of cotton, in carloads, minimum 20,000 pounds, from points in Oklahoma above specified via Galveston, Tex., and the lines of defendant Southern Pacific Company–Atlantic Steamship Lines, to points in New England Territory above specified joint rail-and-water and rail-water-and-rail rates which shall not exceed rates 4 cents per 100 pounds lower than the present all-rail rates from and to the same points.

And it is further ordered, That this order shall continue in force until the further order of the commission.

Modification of March 28, 1925 (R. 8):

Upon further consideration of the record in the above-entitled proceeding and good cause appearing therefor:

It is ordered, That the order entered in this proceeding on March 9, 1925, be, and it is hereby, modified by eliminating from the fourth, fifth, sixth, and seventh paragraphs thereof the following: " in carloads, minimum 20,000 pounds";

It is further ordered, That the said order of March 9, 1925, which was by its terms made effective April 25, 1925, be, and it is hereby, further modified so that it will become effective on May 15, 1925, instead of on said April 25, 1925; but in all other

respects the said order of March 9, 1925, shall remain in full force and effect.

Modification of April 29, 1925 (R. 9):

Upon further consideration of the record in the above-entitled proceeding, and of defendants' petition for modification, and consent of complainants thereto:

It is ordered, That the order entered in this proceeding on March 9, 1925, as modified by order entered March 28, 1925, be, and it is hereby, further modified in the fifth and seventh paragraphs by adding immediately at the end thereof, the following:

Provided, however, that in complying with said order defendants shall not be required to establish rail-and-water and rail-water-and-rail rates lower than $1.50 per 100 pounds.

It is further ordered, That the order entered herein on March 9, 1925, as subsequently modified, which was by its terms made effective May 15, 1925, be, and it is hereby, further modified so that it will become effective on June 15, 1925, instead of on said May 15, 1925.

APPENDIX B

Section 500 of the Transportation Act of 1920 (c. 91, 41 Stat. 499), under "Title V. Miscellaneous Provisions," provides:

SEC. 500. It is hereby declared to be the policy of Congress to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation.

Section 1 of Interstate Commerce Act as amended by Section 400 of Transportation Act of 1920 (c. 91, 41 Stat. 474) provides:

> (1) That the provisions of this Act shall apply to common carriers engaged in—
>
> (a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; * * *
>
> (2) The provisions of this Act shall also apply to such transportation of passengers and property * * *, but only in so far as such transportation * * * takes place within the United States. * * *

Section 15 of the Interstate Commerce Act as amended by Section 418 of the Transportation Act of 1920 (c. 91, 41 Stat. 485) provides:

> The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line.

Section 6 of the Interstate Commerce Act, as amended by Section 11 of the Act of August 24, 1912, commonly known as "The Panama Canal Act" (c. 390, 37 Stat. 566, 568), and by Sections 412 and 413 of the Transportation Act of 1920 (c. 91, 41 Stat. 483), now provides:

> That section six of said Act to regulate commerce, as heretofore amended, is hereby amended by adding a new paragraph at the end thereof, as follows:
>
> (13) "When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the Act to regulate commerce, as amended June eighteenth, nineteen hundred and ten (c. 390, 37 Stat. 568):
>
> "(a) To establish physical connection between the lines of the rail carrier and the dock at which interchange of passengers or property is to be made by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of the railroad right of way, or by directing either or both the rail and water carrier, individually or in connection with one another, to construct and connect with the lines of the rail carrier a track or tracks to the dock. * * * (c. 91, 41 Stat. 483).
>
> "(b) To establish through routes and maximum joint rates between and over such

rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced (c. 390, 37 Stat. 568).

"(c) To establish proportional rates, or maximum, or minimum, or maximum and minimum proportional rates, by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water (c. 91, 41 Stat. 483).

"(d) If any rail carrier subject to the Act to regulate commerce enters into arrangements with any water carrier operating from a port in the United States to a foreign country, through the Panama Canal or otherwise, for the handling of through business between interior points of the United States and such foreign country, the Interstate Commerce Commission may require such railway to enter into similar arrangements with any or all other lines of steamships operating from said port to the same foreign country" (c. 390, 37 Stat. 568).

The orders of the Interstate Commerce Commission relating to this section shall only be made upon formal complaint or in proceedings instituted by the commission of its own motion and after full hearing. The orders provided for in the two amendments to the Act to regulate commerce enacted in this section shall be served in the same manner and enforced by the same penalties and pro-

ceedings as are the orders of the commission made under the provisions of section fifteen of the Act to regulate commerce, as amended June eighteenth, nineteen hundred and ten, and they may be conditioned for the payment of any sum or the giving of security for the payment of any sum or the discharge of any obligation which may be required by the terms of said order (c. 390, 37 Stat. 568).

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No. 190

In the Supreme Court of the United States

OCTOBER TERM, 1926

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY AND ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, HOUSTON COTTON EXCHANGE AND BOARD OF TRADE AND DALLAS COTTON EXCHANGE, APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS

BRIEF FOR INTERSTATE COMMERCE COMMISSION

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Of Counsel.

FEBRUARY, 1927.

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BRIEF FOR INTERSTATE COMMERCE COMMISSION

OPINION OF THE COURT BELOW

The opinion delivered in the Court below is reported in 6 Fed. (2d) 888. (R. 46.)

STATEMENT OF THE CASE

This is an appeal under the Act of October 22, 1913 (38 Stat. 219), from a decree of the District Court for the Northern District of Texas, consisting of Circuit Judge Foster, and District Judges Estes and Atwell, denying an application by two steam

railroads operating in Oklahoma and Texas for an interlocutory injunction to set aside an order of the Interstate Commerce Commission prescribing joint-rail-and-water and rail-water-and-rail rates on cotton from points in Oklahoma via Galveston, Texas, and certain steamship lines to New England destinations, which rates were not to "exceed rates 4 cents per 100 pounds lower than the present all-rail rates from and to the same points," except that no rate lower than $1.50 per 100 pounds was required to be established. (R. 6–9.)

The two steam railroads, appellants herein, are the Chicago, Rock Island & Pacific Railway Company and St. Louis-San Francisco Railway Company, hereinafter called the Rock Island and the Frisco, respectively. Their lines, while extending eastwardly from Oklahoma to the Mississippi River Crossings through which all-rail routes to New England destinations are made, do not extend southwardly from Oklahoma the entire distance to Galveston, freight routed via Galveston having to be delivered to connecting carriers at intermediate points. (R. 73, 77.) The steamship lines operating out of Galveston, affected by the Commission's order, are the Mallory Steamship Company and the Southern Pacific Company-Atlantic Steamship Line, commonly known as Morgan line. Their sailings are to New York City whence connection to New England destinations is made over the lines of other railroads or steamship companies, defendants in the Commission proceeding. (R. 63, 64.)

PROCEEDINGS BEFORE THE COMMISSION

The complaint before the Commission was brought by cotton exchanges of Galveston, Houston and Dallas, Texas, and the Oklahoma State Cotton Exchange. It alleged the failure of the defendant carriers to establish joint through rates on cotton from Oklahoma points through the Texas ports to eastern trunk line, New England and eastern Canada destinations and that the combinations of local rates over said routes which shippers were required to pay were unjust and unreasonable. The Commission was asked to prescribe the establishment of just and reasonable joint through rates. (R. 21–23.) While the rates through Texas ports generally were attacked, the evidence was confined to the rates through Galveston. (R. 30.)

No joint rail-and-water rates were in effect on cotton from Oklahoma through Galveston to these destinations. To New York, the rate was composed of the local rail rate to Galveston, the port-to-port ocean rate and a loading charge. To other points in such destination territory, the rates were made by adding to the New York rate the rail rates beyond. (R. 65, 76.) However, joint water-and-rail rates were in effect from Galveston to many destinations in such territory, in which case rates were made by adding to such joint rates the local rate from Oklahoma to Galveston. (R. 58.)

The all-rail routes from Oklahoma to the same destination territory are through St. Louis, Memphis and other Mississippi crossings. Joint all-rail rates,

based originally on the combination of local rates to and from St. Louis, were in effect between the points considered. (R. 72, 73, 75, 57.) They were higher to New England destinations than the combinations of local rates over the rail-and-water and rail-water-and-rail routes. (R. 88, 89, 137–146.)

While there were no joint rates in effect on cotton from Oklahoma via the Texas ports and water route to the destinations referred to in the complaint there were joint rates established by the rail-and-water carriers on other commodities over the same route applicable in both directions which were lower than the all-rail rates on the same commodities. (R. 59, 113–116.) There were, moreover, joint rates established by said carriers on cotton from Texas points over the water route to the same destinations 8 cents per 100 pounds lower than the all-rail rates. (R. 58, 63, 65.)

The Commission found that it was without authority to require the establishment of joint rates to destinations in Canada. It found that no change was justified in rates to destinations in the northeastern portion of the United States other than those in New England. In respect of the traffic to New England destinations it found that the establishment of joint-rail-and-water and joint-rail-water-and-rail rates from Oklahoma was desirable in the public interest and that existing rates for such transportation were unreasonable to the extent that they exceeded rates 4 cents lower than the all-rail rates. (R. 34, 37.)

The Commission's first report was rendered January 23, 1924. (R. 29.) No order was entered at that time but the report stated that the defendant carriers would be expected to comply with the findings within 90 days. Thereafter the case was reopened for reargument. The report of the Commission on further argument, rendered November 4, 1924, affirmed the findings of the original report and stated that the defendant carriers would be expected to comply therewith within 90 days from the service of this second report. (R. 35.) The defendant carriers did not comply with the findings and on March 9, 1925, the Commission entered its order of that date prescribing rail-and-water and rail-water-and-rail-rates from Oklahoma to New England destinations on cotton, in carloads, minimum 20,000 pounds, "which shall not exceed rates 4 cents per 100 pounds lower than the present all-rail rates from and to the same points." (R. 6–8.) On March 28, 1925, it modified its original order by striking from the fourth, fifth, sixth, and seventh paragraphs thereof the words: "in carloads, minimum 20,000 pounds." (R. 8.) The effect of this modification was to make the rates applicable to shipments of any quantity. It was made, not because of any new matter or finding of the Commission but because the findings in the report of the Commission were not limited to carload freight or any minimum weight and the inclusion in the Commission's order of the words later stricken therefrom was, accordingly, unwarranted by the findings. (R. 34, 37.) On April 29,

1925, the Commission entered its third order which further modified its previous orders by providing that the carriers should not be required to establish any such rate lower than $1.50 per 100 pounds. (R. 9.) This modification, which it will be noted fixed a minimum below which rates were not required to be reduced, was made to avoid certain minor violations of the long-and-short-haul section of the Act. (R. 168, 172.)

PROCEEDINGS IN THE LOWER COURT

On May 28, 1925, the two steam railroads, appellants herein, filed a bill in the court below praying for an interlocutory injunction and a permanent injunction, to set aside the order. (R. 1.) The United States was made defendant. The Interstate Commerce Commission, the Houston Cotton Exchange and Board of Trade and the Dallas Cotton Exchange intervened as defendants and filed answers. (R. 40, 42, 172.) The Court, consisting of Hon. Rufus E. Foster, Circuit Judge, and Hon. W. L. Estes and Hon. William H. Atwell, District Judges, heard the case upon the pleadings, the record made before the Interstate Commerce Commission and some additions thereto and upon stipulation submitting the cause for final hearing on the merits. (R. 46, 49.) On June 9, 1925, the court entered its decree dismissing the bill for want of equity, (R. 49) and on June 17, 1925, filed its opinion rendered in the case. (R. 46.)

APPELLANTS' CONTENTIONS

The following contentions are made in appellants' brief in this court:

I. The order is void because the Commission thereby exercised the power to equalize rail-and-water rates with the all-rail rates and it did not possess this power.

II. If the order was entered in pursuance of the Commission's power to fix reasonable rates, it is without supporting evidence and was arbitrary action.

(*a*) The action of the Commission in making the rail-and-water rates 4 cents less than the all-rail rates was arbitrary and baseless.

(*b*) It was arbitrary action to fix the rail-and-water rates from each point in Oklahoma the same differential under the corresponding all-rail rates.

(*c*) The evidence of record does not show that the rail-and-water rates are unreasonable, nor does it show that the rail-and-water rates prescribed by the Commission are reasonable rates.

(*d*) It was arbitrary action to prescribe the "present" all-rail rate as a standard of reasonableness upon which to base the rail-and-water rate.

III. The order is void because it results in short-hauling the Rock Island and the Frisco contrary to the provisions of paragraph 4 of Section 15 of the Interstate Commerce Act.

IV. The order is void as an order predicated upon the provisions of section 6 (13) of the Interstate Commerce Act.

ARGUMENT

SUMMARY

I. The authority exercised by the Commission was that of establishing reasonable maximum joint rates and the alleged equalization of rail-and-water with all-rail rates was involved merely as an evidential element of rate reasonableness and as a method of convenient description of the rates established by the order.

1. The description of rates 4 cents less than all-rail rates fixed the total maximum amounts of the rail-and-water rates and the 4 cent differential can not be separately seized upon to show that the Commission exercised unauthorized powers or acted arbitrarily in fixing reasonable rates.

2. The fact that the prescription of rail-and-water rates equivalent to all-rail rates results in some instances in lower rates for a longer distance than are prescribed for a shorter distance does not show that the Commission exercised unauthorized powers or acted arbitrarily, since in those instances there were other considerations entering into the reasonableness of the rates tending to modify a measure based solely on distance and costs of the service.

3. The Transportation Act, 1920, emphasized the public interest as an element entering into the determination of reasonable rates.

II. There was ample evidence showing the unreasonableness of existing rates and on which to base a determination of reasonable rates for the future.

1. The all-rail rates afforded reliable standards of reasonableness since they were established rates to which appellants were parties and were not claimed or shown to be unreasonable.

2. The Commission's findings and orders were based on comparisons with all-rail rates and on other competent evidence.

3. Evidence that appellants were subjected to heavy costs in assembling cotton, while relevant to their rights to large proportions of the through rates if claimed in a division proceeding, was not applicable in rebuttal of the evidence showing the reasonable level of joint rates over the full routes.

III. Appellants were accorded full opportunity to be heard.

IV. Since complainants before the Commission clearly stated the action desired there was no need, in order to advise appellants of its nature, that they, in addition, specify their views as to the particular sections of the Act under which the Commission could perform its functions.

V. Through routes "where one of the carriers is a water line" are expressly excepted from the restriction of paragraph (4) of section 15 against establishing through routes which will short-haul rail carriers, and the through routes involved in the order fall squarely within the exception.

1. The Mallory and Morgan Steamship Lines are already carriers subject to the Act under section 1 thereof by reason of arrangements with the rail carriers for continuous shipments and are therefore

water carriers within the meaning of the exception even as construed by appellants.

2. The Mallory and Morgan Steamship Lines are likewise water carriers subject to the Act under paragraph (13) of section 6 and the mention of water carriers in the exception to paragraph (4) of section 15 manifestly has reference to such water carriers as well as those subject to the Act under section 1 thereof.

I

THE AUTHORITY EXERCISED BY THE COMMISSION WAS THAT OF ESTABLISHING REASONABLE MAXIMUM JOINT RATES AND THE ALLEGED EQUALIZATION OF RAIL-AND-WATER WITH ALL-RAIL RATES WAS INVOLVED MERELY AS AN EVIDENTIAL ELEMENT OF RATE REASONABLENESS AND AS A METHOD OF CONVENIENT DESCRIPTION OF THE RATES ESTABLISHED BY THE ORDER

Appellants claim that the Commission's order in substance prescribes the equalization of and the establishment of a fixed differential between rail-and-water rates and all-rail rates and assert that the questions of such equalization and the establishment of such differential were not in issue under the complaint and answers and were not within the authority of the Commission to determine.

The complaint before the Commission alleged the failure of the defendant carriers to establish joint through rates on cotton from Oklahoma points through the Texas ports to the destination territory and that the combinations of local rates over said routes which shippers were required to pay were unjust and unreasonable. The Commission was asked

to prescribe the establishment of just and reasonable joint through rates. It is quite true, as alleged by appellants, that the complaint invoked the exercise of no extraordinary power. Moreover, the Commission's findings and orders were directly responsive to this usual form of pleading in that they directed the discontinuance of existing combinations of local rates and prescribed reasonable maximum joint rates, namely "rates not to exceed rates 4 cents per 100 pounds lower than the present all-rail rates from and to the same points (R. 8) except that no rate lower than $1.50 per 100 pounds was required. (R. 9.)

The appellants urge that although the pleadings and the Commission's order in form relate to the prescription of reasonable rates this is not true of the substance of the Commission's action and they cite *Southern Pacific Company* v. *Interstate Commerce Commission*, 219 U. S. 433, 444, to show that, in determining whether the Commission has exceeded its authority the Court will look to the substance rather than the form of the Commission's action. In support of their view that the Commission sought to exercise authority to equalize or to prescribe a fixed differential between rail-and-water and all-rail rates, the appellants quote a statement made by the Commission in its report that the complainants were in effect seeking such equalization of rates. The Commission relies confidently on the same decision in *Southern Pacific Company* v. *The Interstate Commission, supra*, to show that such casual description of the relief sought by the complainant cannot alter

the substance of the complaint or the nature of the relief in fact accorded by the Commission's order. Appellants admit, in fact allege, that the complaint did not invoke an exercise of power to equalize rates. The Commission's order, although fixing a maximum based on all-rail rates, permits the carriers to establish lower rates. The rates prescribed are not based on all-rail rates contemporaneously in effect, but on present all-rail rates. If present all-rail rates should be changed the prescribed rail-and-water rates would not be correspondingly changed thereby but would remain as now prescribed until duly altered in the manner set forth in the Act. There certainly can be no objection to the use of the all-rail rates as a matter of convenient description. The only lawful present all-rail rates are those in the published tariffs. They are definite and certain in that no departures are allowed therefrom. The prescription of joint rates which shall not exceed rates 4 cents under present all-rail rates states maximum joint rates just as definitely and certainly as would statements of the actual figures of the numerous rates involved.

The appellants' chief reliance in support of this assertion of an exercise by the Commission or power to equalize rather than to establish reasonable rates is apparently based on the assumption that the Commission acted solely on that part of the evidence which disclosed, through comparisons, that rail-and-water rates on a higher level than all-rail rates between the same points were being maintained. But, as we will show later, there was other evidence tending to place

the different circumstances obtaining over the respective routes on a properly comparable basis, for example evidence of comparative ton-mile earnings, evidence of the relationship between transportation costs by rail and those by water, evidence that on innumerable commodities other than cotton the reverse situation was maintained, namely, that of rail-and-water rates lower than all-rail rates, and evidence of certain costs to the shipper incidental to the rail-and-water route to which he was not subjected in the case of all-rail transportation. Comparative evidence is perfectly good evidence of the reasonableness of rates. *Virginian Ry. Co.* v. *United States et al.*, — U. S. —, decided December 13, 1926. The all-rail rates on which the comparison was based had long been established and the 15 cents increase made by the Director General of Railroads on account of general changes in costs of labor and materials had been applied thereto only once in contrast with the double and sometimes triple application thereof to the existing combinations of local rates over the rail-and-water route. (R. 32, 57, 58, 60.) Moreover, there was evidence of the reasonableness of the rates, later to be detailed, not dependent upon comparisons with other rates.

In order that there may be no misunderstanding of the Commission's position arising from the fact that it denies that it equalized rates in the manner alleged by appellants and at the same time concedes that its order has placed rail-and-water rates on a sub-

stantial parity with all-rail rates, it should be explained that the Commission, while admitting that it may not equalize rates with other rates in the absence of supporting evidence, nevertheless firmly believes that, if the evidence in respect of reasonableness before it calls for the prescription of rates equal to other established rates, it is quite within its authority to give effect to that evidence by prescribing rates equal to those other rates as then established.

1. The prescription of rates 4 cents less than all-rail rates fixed the total maximum amounts of the rail-and-water rates and the 4 cent differential can not be separately seized upon to show that the Commission exercised unauthorized powers or acted arbitrarily in fixing reasonable rates

The appellants urge that the prescription of rates 4 cents under all-rail rates shows that the Commission sought to equalize rail-and-water rates with all-rail rates rather than to prescribe reasonable maximum joint rail-and-water rates, because, by establishing the 4 cent differential, representative of the premium for insurance to cover the risk of transportation by water, the rail-and-water rates were made equal in amount to the all-rail rates. This claim is somewhat at variance with the contention made at pages 29 to 31 of appellants' brief that the Commission's action was arbitrary because in determining reasonable rates it took into consideration this insurance premium charge, which, it is asserted, was a variable quantity dependent upon the fluctu-

ating value of cotton. It is not admitted that this 4 cent differential was established solely as representative of marine insurance cost for there was other evidence before the Commission warranting rail-and-water rates lower than all-rail rates as will later be shown. But even assuming that 4 cents constituted an exact measure of the insurance cost and that the differential was established solely as representative thereof there would appear to be no good reason why that element could not properly be considered as entering into the reasonableness of the rates since the value of the rail-and-water transportation service afforded by the carriers would be diminished by the amount of the insurance the shipper would have to pay as an incident to that transportation. The prescription of rates 4 cents less than all-rail rates described the total amount of the rate. That amount was a maximum leaving open to the carriers to establish lower rates if they chose to do so. The total amount fixed cannot be separated into parts but, on the contrary, represent as a whole all elements entering into the Commission's determination of the reasonable rate. The descriptive differential cannot, therefore, be wedged apart from the whole amount and given any weight in support of appellant's contentions.

2. The fact that the prescription of rail-and-water rates equivalent to all-rail rates results in some instances in lower rates for a longer distance than are prescribed for a shorter distance does not show that the commission exercised unauthorized powers or acted arbitrarily, since in those instances there were other considerations entering into the reasonableness of the rates tending to modify a measure based solely on distance and costs of the service

Appellants contend that the intent to exercise a power to equalize rather than to establish reasonable rates is shown by the fact that the order fixing rail-and-water rates 4 cents under all-rail rates results in some instances in lower rates for a longer distance than are prescribed for a shorter distance, this being due to the fact that whereas the rail-and-water distances from certain points in northern Oklahoma are longer than from certain points in southern Oklahoma the all-rail distances from the northern points are shorter than from the southern points. Distance is not the only element entering into a determination of rate reasonableness. It is a matter of common knowledge that different rail routes between two points seldom, if ever, comprise the same mileage and from the point of view of operating costs alone the longer route would usually warrant higher rates than the shorter route. Yet it is apparent that unless rates over the different routes are established on a parity the traffic will be monopolized by the carrier charging the lowest rates. Similarly the longer rail-and-water route from northern Oklahoma points may, considered solely from the

standpoint of operating costs, warrant higher rates than the shorter haul from southern Oklahoma points, but it would be futile to establish them on a higher basis than the all-rail rates between the same points of origin and destination. That the Commission recognized this elemental fact is not evidence that it sought to exercise a power different from its power to establish reasonable rates, or that it acted arbitrarily in determining reasonable rates. In such a situation the market value of the transportation enters largely into the reasonableness of the rates just as market quotations for a commodity are determinative of the price that may be asked. In so far as the rail-and-water rates from southern Oklahoma points are concerned the Commission had before it as will later be shown ample evidence for determination of the reasonableness of the rates prescribed by it. The mere fact that these latter rates were higher for a shorter distance than the rates for a longer distance from the northern points does not prove them unreasonably high, particularly in face of appellants' apparent claims that they are too low. Nor does it prove that the rates from the northern points were noncompensatory or unreasonably low. It merely demonstrates that additional considerations entered into the determination of the reasonableness of rates from the northern points tending to keep them at a lower level than consideration of operating costs alone might have justified. Even though the reasonableness of the rates is considered

solely from the point of view of the resulting profit to the carrier the securing of the traffic is inseparable therefrom. No traffic spells no return, whereas a large volume of traffic at a low margin of profit may well account for the full return to which the carrier may be entitled. The reasonableness of the joint-rail-and-water rates must, moreover, be regarded from the standpoint of the entire route over which each rate is established. The mere claim of appellants, the originating carriers, that the rates are unreasonably low, if it is to be construed as such, can be given little weight in face of the acquiescence therein of other participating carriers, particularly since, as will later be shown, the bulk of the evidence submitted by appellants, while it would be relevant in a division's proceeding in support of a claim for a high proportion of the through rate, has little, if any, application to the issue of the reasonableness of the through rates themselves.

Reference to a map of the United States will at once make clear the reasons why the Commission directed its order solely to points in New England and did not find that the rail-water-and-rail rates to the other territory involved were unreasonable. The all-rail distances from Oklahoma to points west of New York become shorter the further west such destinations are removed from New York while the rail-water-and-rail distances to those destinations via Galveston and New York at the same time become longer, involving heavier per mile costs and consequent lower ton-mile and car-mile earnings

because of the progressively increasing portion of the total distance comprised of the more expensive rail transportation. On the other hand, the New England states are located east and north of New York City and the distances whether by all-rail or by rail-water-and-rail routes are correspondingly increased for destinations located beyond New York. Moreover, the low cost water transportation forms a large proportion of the total distance traversed in the rail-and-water route from Oklahoma to the New England states, particularly where the transportation beyond New York is made by one of the numerous water carriers operating between New York and the New England cotton-manufacturing centers. This, we believe conclusively refutes appellants' claim that the Commission's refusal to fix rail-and-water rates to destinations other than New England points shows that it was not fixing reasonable rates but in reality seeking to equalize rail-and-water rates with all-rail rates. If the Commission had been merely equalizing such rates it would have acted in respect of all destinations. It found that it could not so act without unreasonable disregard of the cost of the service to the carriers. Unquestionably within certain limits other elements may enter into the determination of reasonable rates tending to modify a measure based on costs to the carriers, distance and the like, as was the case in the instances cited by appellants of the lower rates for the longer distance from northern Oklahoma points than the rates for the shorter distance from southern Oklahoma points.

If rail-and-water rates equivalent to all-rail rates had been prescribed for destinations other than in New England the very situation cited would have been exaggerated to the point where such rates would have been unreasonable and possibly in some cases noncompensatory. It is true that, if the Commission had been acting pursuant to appellants' views of its exercise of authority, it might have established rail-and-water rates higher than all-rail rates to those destinations. But such joint rates would not have been desirable in the public interest. The action suggested would have been a meaningless gesture, of benefit neither to the carriers nor to the public served.

3. **The Transportation Act, 1920, emphasized the public interest as an element entering into the determination of reasonable rates**

In *Southern Pac. Co.* v. *Interstate Com. Comm.*, 219 U. S. 433, which is appellant's chief reliance in support of its contention that the Commission exceeded its jurisdiction by equalizing rail-and-water rates with all-rail rates, the court held that the Commission had exceeded its authority because its action preventing the railroad from increasing rates, had been induced chiefly by consideration of the welfare of an industry that had been built up on the basis of the low rates theretofore prevailing. In arriving at its decision the court states, at page 449, that the Commission's report shows that it was based on an assumption of right "to protect the lumber interests

of the Willamette Valley from the consequences which it was deemed would arise from a change of the rate, even if that change was from an unreasonably low rate which had prevailed for some time to a just and reasonable charge for the service rendered for the future." This is in direct contrast with the present situation where the Commission's report, although stating, without full explanation of its meaning, that the complainants sought equalization of rail-and-water rates with all-rail rates, nevertheless proceeds to give consideration to the inherent reasonableness of the rates involved. Appellant's view is, apparently, that the Commission has proceeded contrary to the principles laid down in this case because the level of all-rail rates has necessarily in some instances entered into the determination of the level at which maximum rail-and-water rates might be fixed with reasonable expectation that the rail-and-water route might thereby be rendered available to cotton shippers. This it seems is thought to constitute an invasion by the Commission in respect of the carriers' rights to regulate their own general policies. It is apparent that appellants are contending for a strained construction of the decision relied upon. Moreover the case was decided long prior to the Transportation Act, 1920, which act, so it is stated in the *New England Divisions Case*, 261 U. S. 184,189, another authority cited by appellants, introduced a new regulatory policy, namely, that of ensuring adequate transportation

service as well as that of the prevention of abuses arising from excessive or discriminatory rates. By this Act Congress announced its policy "to promote, encourage and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation." (41 Stat. 499.) The same act extended the Commission's authority to the fixing of minimum reasonable railroad rates thereby evidencing an intent to permit the Commission to give consideration to general railroad policies at least to the extent of preventing the railroads from reducing rates, in an attempt to get competitive traffic, to such a point that adequate revenues for an efficient transportation service might be endangered. But from the standpoint of this case the most important amendment made by the Transportation Act, 1920, is that contained in paragraph (3) of section 15 of the Interstate Commerce Act, whereby it was made mandatory upon the Commission to establish through routes and joint rates both as to rail and rail-and-water transporation, "whenever deemed by it to be necessary or desirable in the public interest." As will later be shown the evidence established that joint rail-and-water rates at a level permitting flow of the traffic were desirable in the public interest. The Commission, then, had to act. Can it be said that Congress while making it mandatory upon the Commission to establish joint rates whenever desirable in the public interest con-

templated that the Commission might establish rates not at all desirable in the public interest, namely, at a level too high to permit of the flow of traffic? This might well result if the Commission in determining reasonable rates, should be constrained to leave out of consideration the rates at which similar transportation service could be obtained.

II

THERE WAS AMPLE EVIDENCE SHOWING THE UNREASONABLENESS OF EXISTING RATES AND ON WHICH TO BASE A DETERMINATION OF REASONABLE RATES FOR THE FUTURE

Appellants' allegation that there was no evidence in support of the finding of unreasonableness of existing rates is in part based on the fact that certain of the evidence placed before the Commission consisted of comparisons with all-rail rates between the same points which latter, it is contended, did not constitute proper bases for comparison. Comparative evidence, as will later be shown, was by no means the only evidence before the Commission. But comparisons with established rates is perfectly good evidence and frequently affords the very best practicable evidence of the involved question of reasonableness of charges for transportation.

1. The all-rail rates afforded reliable standards of reasonableness since they were established rates to which appellants were parties and were not claimed or shown to be unreasonable

The all-rail rates relied upon for comparison in part of the evidence before the Commission had long

been established by appellants and other participating railroads and, as above stated, had been subjected only to the normal changes on account of increased costs of labor and materials ordered by the Director General in respect of all railroads, whereas the 15-cent increase so inaugurated by the Director General had been applied to each factor of the combinations of local rates over the rail-and-water route. (R. 32, 57, 58, 60.) The evidence showed that they yielded substantial ton-mile earnings. (R. 117.) They were not claimed by any of the parties to be unreasonably low. Although witness Dalzell refused on cross-examination to admit that they were reasonable rates it is obvious that by such refusal he was guarding against an admission on behalf of shippers represented by him that the rates were not in fact unreasonably high. (R. 61, 62.)

The Commission gave consideration to dissimilarities in conditions under which the rail and rail-and-water transportations were performed as for example by giving consideration to differences in ton-mile earnings and by taking cognizance of the low transportation costs of water carriers and their lesser liability for loss and damage. It was shown in the record that the carriers' costs in assembling cotton were the same whether the movement was by rail-and-water or entirely by railroad. That the Commission in determining rate reasonableness may resort to comparisons with other rates is shown in the opinion of this court in *Virginian Ry. Co.* v.

United States et al., — U. S. —, decided December 13, 1926. It was there said:

> The Virginian contends that the evidence before the Commission does not support its finding that the rates on coal from the Virginian's mines *via* the Chesapeake & Ohio are unreasonable to the extent that they exceed the New River district rates maintained by the latter carrier from mines on its own and connecting lines having no other outlet to the western markets. The argument is that these rates cannot be considered standards of reasonableness because, as the Commission declared in the present controversy, they are "the outcome of competitive strain and stress through long periods of development," and, as it had stated in an earlier case, they have been made "in practical, if not absolute disregard of distance, and all transportation conditions that ordinarily are taken into consideration in the making of rates," and "are below the level at which maximum reasonable rates might be maintained." *Bituminous Coal to C. F. A. Territory*, 46 I. C. C. 66, 122, 145. The finding of reasonableness, like that of undue prejudice, is a determination of a fact by a tribunal "informed by experience." *Illinois Central R. R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 454. This Court has no concern with the correctness of the Commission's reasoning, with the soundness of its conclusions, or with the alleged inconsistency with findings made in other proceedings before it. *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541. It was shown

> that a huge coal traffic moves from this territory, under like operating conditions, at the blanket rates which were voluntarily established by the other carriers to serve mines similarly located. This fact, and much else in the voluminous record, afford substantive evidence to support the finding that the existing rates are unreasonable; and that those which the order directs are reasonable.

To the same effect see *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, 565.

It will be noted that in the case above quoted from the rates used as standards of reasonableness had been established in practical disregard of distance and under the stress and strain of competition. The all-rail rates here under consideration were not shown to have been established under such conditions and were not claimed to be unreasonable rates.

2. Outline of the evidence

The following is a brief statement of the evidence before the Commission in respect of rate reasonableness.

The Commission's decision, substantiated by the record, points out that prior to 1917 rail-and-water rates were lower than all-rail rates, and that the present situation of rail-and-water rates higher than all-rail rates had been brought about by increases in water rates made that year and had been exaggerated by General Order No. 28 of the Director General of Railroads (May 25, 1918) whereby the all-rail through rates were advanced only 15 cents

per 100 pounds, whereas the 15-cent increase was applied to both factors of the combination rail-and-water rates via Galveston. (R. 32, 57, 58, 60.) The witness Dalzell explained that there were through rates in effect from Galveston to many points in the eastern spinning district and that in such case the 15-cent increase was applied to the combination rates only twice, but that in the case of destinations not included in such through rates the 15-cent increase was applied three times, namely: (1) to the local rate from point of origin to Galveston, (2) to the rate from Galveston to New York, and (3) to the rate from New York to destination. (R. 58.)

The decision also contains a table comparing the all-rail with the rail-and-water rates from representative Oklahoma points to New York, Albany, Boston, and Baltimore. Of these destinations Boston alone is in New England territory. The water rate to Boston is there shown to be 22 cents per 100 pounds higher than the all-rail rate. (R. 31.)

The record shows the spread to be considerably greater to many points in New England other than Boston. (R. 88–112.)

This situation is made particularly clear by exhibits introduced in the Commission's proceedings by the plaintiffs before this court. (R. 124–129.)

The decision contains a further table, compiled from exhibits of record, comparing all-rail distances from Oklahoma points to Boston and other destinations with the rail-and-water distances to the same points constructed upon the basis of 3 water miles as

the equivalent of 1 rail mile, that is to say, upon the assumption that the per-mile costs of a water carrier operating between Galveston and New York are one-third of the costs of the railroads concerned in the all-rail movements. (R. 30, 31, 56, 84–88.) This constructive milege basis was not attacked by the defendant railroads and was expressly concurred in by witness Levis, traffic manager of the Clyde and Mallory steamship lines. (R. 64.) The same and higher ratios have been used in other cases in determining the constructive mileage in connection with traffic between New York and Galveston. *Southwestern Shippers Traffic Association* v. *A. T. & S. F. Ry. Co.*, 24 I. C. C. 570; *Reduced Rates from New York Piers*, 81 I. C. C. 312. Using this constructive mileage basis the table shows that the rail-and-water distances to Boston are much less than the all-rail distances. (R. 84–88.) The effect of this showing is to demonstrate not only that the water route to New England is not unduly circuitous but that its cost of operation is less than the all-rail route, and, accordingly, does not warrant rates higher than the all-rail rates to the same destinations.

The Commission's decision further points out that joint rail-water-and-rail rates on cotton via Galveston 8 cents under the all-rail rates are in effect from Texas points to the northeastern states. (R. 32, 58, 63, 65.) Exhibits of the Rock Island and Frisco give these rates and the distances involved in detail, thereby affording bases for comparison of established joint rates from intermediate and other Texas points with

the joint rates to be established in large part over the same route. (R. 149–151; 163–164.)

Exhibit 8 compares joint rail-water-and-rail rates that are in effect on various commodities other than cotton between certain New England and Oklahoma points via Galveston with all-rail rates, showing that in every instance rail-and-water rates are much lower. The exhibit likewise affords material for comparing rail-and-water rates on cotton with rail-and-water rates on other commodities. (R. 59, 113–116.)

The witness Dalzell stated that the discrepancy between the existing rail-and-water and all-rail rates is even greater than would appear from the exhibits submitted for the reason that certain unloading and switching charges applying by water were not included and because all-rail rates apply on any quantity whereas the rail-and-water rates are limited to shipments of a minimum weight of 20,000 pounds. (R. 57.)

Exhibit No. 9 in the Commission's record contains an estimate of ton-mile earnings over the rail-and-water route as compared with the all-rail route based upon average distances and average rates from Oklahoma points to representative eastern destinations, the water portion of the rail-and-water distance being estimated on the constructive basis above mentioned. It shows uniformly higher ton-mile earnings under existing water rates than under all-rail rates to the new England points mentioned, namely: To Boston,

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by water 26.2 mills, by rail 18.9 mills; to Lowell, by water 27.8 mills, by rail 18.6 mills. (R.117.) It is obvious that aside from its comparative evidential value the exhibit affords some evidence as to whether or not the rail-and-water rates and the all-rail rates are reasonable in and of themselves.

The Commission's decision also mentions that the Morgan line and the Mallory line, with their eastern rail and boat connections, are willing to participate in joint rates and in fact made an attempt to effect their establishment which was frustrated by the refusal of the Oklahoma carriers to enter into the arrangement. (R. 32.) Reference to the record bears this out. (R. 63, 64, 65, 66.) The willingness of the eastern rail and boat connections to participate in the rates advocated by the steamship lines also appears from the testimony of the witnesses for the steamship lines. (R. 64, 66.) This willingness of the carriers other than the Rock Island and Frisco to participate in the proposed rates must be regarded as having some evidential bearing on the reasonableness thereof. It is not likely that these carriers, even though such rates might have been expected to yield them additional traffic while depriving the Rock Island and Frisco of their long haul on a part of the traffic, would be willing and anxious to join in the rates unless they were fixed upon a reasonably compensatory basis.

It has already been mentioned that paragraph (3) of section 15 of the Act not only authorizes but requires the Commission to establish through routes

and joint rates, whenever desirable in the public interest. It can not be said that the Act, while making mandatory the establishment of joint rail-and-water rates desirable in the public interest contemplated the establishment of rates not desirable in the public interest because at a level not permitting of the flow of traffic in competition with all-rail rates. The public interest is, therefore, an element properly entering into the determination of reasonable joint rates in this case. The evidence produced at the hearing showed the interest of the public (both producers and consumers) in the establishment of joint rates at such level as would render the rail-and-water route economically available for use.

The statement in the Commission's decision (R. 27) that Oklahoma cotton growers desire the joint rail-and-water rates in order to interest buyers in the Texas ports and because of the advantages of diversity of routes and the more dependable movement and certain time of arrival by water than by rail is amply borne out by the record. The witness Sparks, sales manager of the Oklahoma Cotton Growers Association, testified that the storage facilities in the cotton-growing territory were inadequate and that the proposed joint rates through Texas ports would enable producers to ship to storage points in Texas and hold their cotton there, awaiting a favorable market. Thereby they would be relieved of the necessity of dumping their cotton in a short period of time and would be enabled to spread their sales over an extended period. Access to such storage facilities

would further give them the opportunity to divert their cotton for export if conditions should warrant. (R. 68, 69.)

The witness Thornton, traffic manager of the Galveston Cotton Exchange and Board of Trade, testified that large buyers of cotton in Oklahoma among the members of his association wanted the adjustment of rates asked for in order to enable them to ship via Galveston and that certain of them had been obliged to discontinue buying in Oklahoma because of the freight rate situation over the Galveston routes. (R. 69, 70.) The record further shows that the proposed rail-and-water rates would be helpful to New England buyers because of the more certain time of arrival by boat and because in times of rail congestion shipments could be routed over the numerous boat lines operating from New York to Boston, Providence, Fall River, New Bedford, Lowell, Hartford, and other New England manufacturing centers. (R. 65, 68.)

3. Evidence that appellants were subjected to heavy costs in assembling cotton, while relevant to their rights to large proportions of the through rates if claimed in a divisions proceeding, was not applicable in rebuttal of the evidence showing the reasonable level of joint rates over the full routes

The evidence submitted by the Rock Island and Frisco showed that they were subjected to heavy costs in assembling cotton for transportation and that the rail-and-water route by comparison with the all-rail route entailed to them sacrifices of mileage. While

such evidence would be relevant in a proceeding for the fixing of the proper divisions of the carriers participating in the new rates it has little or no bearing on the reasonableness of the through rates considered with reference to the entire distances over which they are applicable. It may be true that the expenses incurred by these originating carriers in assembling and preparing cotton for transportation considered in connection with the short mileage over their lines comprised in the rail-and-water route would entitle them to especial consideration in the fixing of divisions. Nevertheless on their own evidence such expenses are incidental to their carriage of the cotton whether by the rail-and-water route or by the all-rail route. If the other participants should fail to allow them a reasonable proportion of the through rates that would not render the rates unreasonable for they may apply to the Commission for the establishment of reasonable divisions. *United States* v. *Illinois R. R.*, 263 U. S. 515, 524.

III

APPELLANTS WERE ACCORDED FULL OPPORTUNITY TO BE HEARD

The evidence above outlined shows that the service rendered over the rail-and-water route, by comparison with that rendered over the all-rail route, did not warrant rail-and-water rates higher than all-rail rates between the same points. That part of the evidence dealing solely with the rail-and-water route, consisting of comparisons with rates

on cotton from intermediate and other Texas points and with rates on other commodities over the full route, ton-mile earnings and willingness of the carriers other than the Rock Island and Frisco to join in the proposed rates, afforded an adequate basis upon which to determine a reasonable level of rates for the future even though viewed solely from the standpoint of the service rendered by, and the operating costs of, the carriers. The submission of cost studies by the innumerable carriers, apportioning and reapportioning items in order to effect a segregation of the costs of the particular service was impracticable and would have entailed a large and useless waste of carrier revenues. The evidence must be regarded as ample for the Commission's determination as of the date of the hearing.

But appellants contend that the fact that rates, both rail-and-water and all-rail, were changed between the time of the hearing and the dates of the Commission's differently dated reports and orders shows that the Commission, in prescribing rail-and-water rates based on "present all-rail rates," that is to say, rates in effect at the time of the decisions and orders, disregarded evidence representative of conditions at the time of the hearing and further that it thereby denied appellants the opportunity to show that the circumstances and conditions inducing the reduction in all-rail rates did not obtain over the rail-and-water route. In this connection it should be noted that appellants do not allege nor does it appear that rates

were changed between the date of the Commission's first report and its last order. Therefore no ambiguity resulted from the Commission's reference to "present all-rail rates" in its reports and orders and, accordingly, appellants' contentions are to be considered solely in respect of the reductions in rail-and-water and all-rail rates mentioned in the Commission's report as having occurred after the hearing. (R. 33, 34.) Narrowed to their simplest terms the questions are as to whether the Commission improperly took note of such reductions and as to whether by finding the reduced rail-and-water rates, instead of those shown in the record, unreasonable and by prescribing rates for the future based on the reduced all-rail rates, rather than those shown in the record, it proceeded in disregard of evidence properly before it and in disregard of appellants' right of full hearing. These questions call for an unclouded view of the use in fact made by the Commission of its knowledge that rates had changed.

As has been said the record was ample, in so far as conditions at the time of hearing are concerned, upon which to determine a level of future reasonable rates that would bear a proper relationship to the services rendered by the carriers. But all-rail rates had changed and the record also showed that the traffic would not move over the rail-and-water route on rates higher than all-rail rates. Considered from the point of view of the carriers alone the establishment of such rates would have been a futile act. Moreover the record further disclosed that opening up of the rail-and-water route was desirable in the

public interest. Such showing having been made the Commission was under mandate of the Act to establish joint rates, and since the establishment of rates which would not have rendered the route economically available would have defeated the purpose of the Act just as effectively as would the nonaction of the Commission it is apparent that it was likewise under statutory mandate to prescribe joint rates bearing some relationship to the rates at which similar transportation service was available at the time of rendering its decision. The carriers filed and published tariffs are of statutory force and effect, binding upon carrier and shipper alike. *Penna. R. R. Co.* v. *International Coal Co.*, 230 U. S. 184; *Louis. & Nash. R. R.* v. *Maxwell*, 237 U. S. 94; *Alabama G. S. R. Co.* v. *George H. M'Fadden Bros.*, 232 Fed. 1000. In view of this fact can it be said that the Commission could not take judicial notice of the changes in rates for the purpose of effecting compliance with the statutory mandate to the extent permitted by the evidence before it and in so far, at least, as the use made thereof would not in reality deny to appellants their constitutional right of due hearing. The Commission had recourse to the tariffs of present all-rail rates for the purpose of obtaining the maximum level at which it could establish rail-and-water rates without defeating the mandate of the Act and it had recourse to the tariffs of rail-and-water rates for the purpose of ascertaining whether reductions in those rates had brought them within the zone of reasonableness, thereby rendering

further reductions unnecessary. Having in this way secured the maximum rate at which the route could be expected to be made available to the public it could compare that amount with the level, ascertained from the physical record, below which the transportation service rendered by the carriers would not warrant the fixing of rates. By such comparison the Commission could assure itself that rates precribed at such maximum would not be unreasonable from the standpoint of the carriers' operating costs, at least under the conditions and circumstances obtaining at the time of the hearing. All that was left to be done in order to have completely fulfilled appellants' contentions as to what should have been done was to have accorded them the opportunity to show that, even though the all-rail rates, as reduced after the hearing, constituted a proper standard of reasonableness for rail-and-water rates under circumstances and conditions obtaining at the time of the hearing, such circumstances and conditions had so changed at the time the reductions were made that they no longer afforded a proper standard. This analysis narrows appellants' contention down to just what it is, namely, a claim that they were denied full hearing because they were not granted an opportunity to show changes in circumstances and conditions occurring between the time of the hearing and the time when the Commission's decision was rendered. It would seem, however, that appellants failed to avail themselves of their opportunity of hearing on this question, since in

their petition for rehearing and reargument,[1] filed after the rendering of the Commission's first report, they made no claim that relative circumstances and conditions surrounding rail-and-water transportation and all-rail transportation had so changed since the hearing as to render improper any determinations in respect thereof based on the evidence taken at the hearing. Moreover it should be kept in mind that the contention of appellants that the Commission's decision does not take into consideration changes in circumstances and conditions that may have arisen between the time of the hearing and the time its decision was rendered discloses only the usual situation under which the Commission renders decision in its larger proceedings. The appellants might have claimed with equal truth that the Commission's action may not reflect with absolute accuracy the circumstances and conditions which have obtained since its decision and which may in future obtain during the effective period of its order. In performing its legislative function of prescribing rates the Commission necessarily projects into the future the results of a decision based on present conditions. It might with absolute justice assume that the economic law involved in this case, namely, that traffic will follow the lowest rates, would still apply in the future. But it cannot foresee and give effect to all

[1] Copy of this document is shown as an appendix of this brief. Certified copy thereof was before the court below but was omitted from the printed record although designated for printing by appellees. (R. 168, 176.)

changes that will inevitably take place between the date of one proceeding and the time when a succeeding proceeding in respect of the same rates may be brought to a conclusion. The reopening of a major Commission proceeding is warranted only on clear showing of substantial change in circumstances and conditions, for it gives effect only to what has taken place and cannot adequately reflect the minor changes which are constantly occurring.

On March 28, 1925, the Commission modified its original order of March 9, 1925, by striking from the fourth, fifth, sixth, and seventh paragraphs thereof the words: "in carloads, minimum 20,000 pounds." (R. 8.) The effect of this modification was to make the rates applicable to shipments of any quantity. The modification was not made because of any new matter or finding of the Commission but because the findings in the reports of the Commission were not limited to carload freight or any minimum weight (R. 34, 37) and the inclusion in the Commission's order of the words later stricken therefrom was, accordingly, unwarranted by the findings. It is, therefore, apparent that the order did not cover any new matter or entail any new findings which would have entitled any of the parties to further hearing.

On April 29, 1925, the Commission entered its third order which further modified its previous orders by providing that the carriers should not be required to establish any such rate lower than $1.50 per 100 pounds. (R. 8, 9.) This modification was made upon the petition of the steamship lines and

the Southern Pacific lines in Texas, showing the necessity therefor in order to avoid certain minor violations of the long-and-short-haul section of the Act. (R. 168, 169.) The plaintiffs herein and other Oklahoma lines concurred in the petition by a telegram sent to the Commission by their authorized tariff agent. (R. 172.) Moreover, this last modification, prescribing a minimum below which appellants were not required to reduce their rates, would not appear to be detrimental to their interests.

IV

SINCE COMPLAINANTS BEFORE THE COMMISSION CLEARLY STATED THE ACTION DESIRED THERE WAS NO NEED, IN ORDER TO ADVISE APPELLANTS OF ITS NATURE, THAT THEY, IN ADDITION, SPECIFY THEIR VIEWS AS TO THE PARTICULAR SECTIONS OF THE ACT UNDER WHICH THE COMMISSION COULD PERFORM ITS FUNCTIONS

The appellants contend that the order is null and void because the Commission predicated its authority to act in the premises on paragraph (13) of section 6 whereas the complaint before it had not specifically invoked its authority under that paragraph. The complaint before the Commission (R. 19–23) alleged violations by the carriers of their duties, prescribed in section 1, to establish and maintain reasonable through routes and joint rates and asked for the establishment of joint through rates between points of origin and destination and over routes which were described with sufficient accuracy to enable appellants, apparently without confusion in respect of the issues raised, to prepare and submit rebuttal evidence. It may be

confidently asserted that the relief asked for is the matter of importance and not the conclusions of the complainants as to provisions of law under which that relief may be granted.

The Commission, in its report on further argument, (R. 35–37) sets forth the provisions of the Interstate Commerce Act which clothed it with jurisdiction in the premises. The provisions mentioned are given below.

Section 1, paragraphs (1) and (2), (24 Stat. 379; 41 Stat. 474) provide in part:

> (1) That the provisions of this Act shall apply to common carriers engaged in—
>
> (a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; * * *
>
> (2) The provisions of this Act shall also apply to such transportation * * *, but only in so far as such transportation * * * takes place within the United States.

Section 15, paragraph (3) (41 Stat. 485), provides in part:

> (3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or

minima, or maxima and minima, to be charged, (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line. * * *

Section 6, paragraph (13) (37 Stat. 568; 41 Stat. 483), provides in part:

(13) When property may be or is transported from point to point in the United States by rail-and-water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the Act to regulate commerce, as amended June eighteenth, nineteen hundred and ten:

(a) To establish physical connection between the lines of the rail carrier and the dock * * *.

(b) To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced.

By paragraph (3) of section 15 the Commission is required to establish through routes, joint classifications and joint rates, or the maxima or minima, or both, whenever it considers the same necessary or desirable in the public interest. By express language this provision is made to apply when one of the carriers is a water line, except that in such case the Commission's authority is limited to prescribing maximum rates.

Paragraph (13) of section 6 authorizes the Commission to establish physical connection between the lines of the rail carriers and the dock and to establish through routes and maximum joint rates, whenever property may be or is transported from point to point in the United States by rail-and-water.

It would seem that, by these provisions of sections 15 and 6 of the Act, Congress had very clearly expressed an intention to clothe the Commission with the powers it has exercised in issuing the order which is here under attack. In respect of both paragraph (13) of section 6 and paragraph (3) of section 15 of the Act, however, appellants contend that the provisions thereof must be limited in their application to the carriers and the transportation as defined in paragraph (1) of section 1 of the Act above given, namely, in so far as rail-and-water transportation is concerned, to cases where both rail and water carriers are used under a common control, management, or arrangement for a continuous carriage or shipment. This contention will be considered in connection with another closely related contention of

appellants which is discussed in the following chapter of this brief.

V

THROUGH ROUTES "WHERE ONE OF THE CARRIERS IS A WATER LINE" ARE EXPRESSLY EXCEPTED FROM THE RESTRICTION OF PARAGRAPH (4) OF SECTION 15 AGAINST ESTABLISHING THROUGH ROUTES WHICH WILL SHORT HAUL RAIL CARRIERS AND THE THROUGH ROUTES INVOLVED IN THE ORDER FALL SQUARELY WITHIN THE EXCEPTION

In support of their contention, discussed in the last chapter, that the complainants before the Commission had not invoked exercise of authority under paragraph (13) of section 6 the appellants rely in part on the following statement of complainants' counsel made at the commencement of the hearing with reference to a summary of the contents of the complaint as given by the examiner. (R. 55, 56.)

> That is true, Mr. Examiner, unless it be correct to say that in the requirement to put in joint through rates, where joint rates do not exist, we should invoke section 15, I believe it is, of the Act.

This rather indefinite statement cannot be said to have confined the Commission's authority to act to the provisions of section 15, thereby inhibiting exercise of authority under paragraph (13) of section 6. The rule that parties must be sufficiently advised as to the issues raised in order that they may meet the same was complied with in respect of the substance of the complaint. That rule is not applicable to jurisdictional questions. All persons are charged with knowledge of the law and if a party questions the authority

of a tribunal to take the action prayed for in a complaint it must be presumed to know its own reasons therefor.

This claim of appellants that the Commission could look only to section 15 for its authority is, however, a necessary premise to its further claim that the Commission was entirely devoid of authority to act on the complaint because of the qualification in respect of its authority to establish through routes under section 15, contained in paragraph (4) of that section. This paragraph reads in part as follows:

> (4) In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, * * *.

It is claimed that the Commission's order is void because the establishment of the through routes therein prescribed would require each of the appellants "to embrace in such routes substantially less than the entire length of its railroad * * * which lies between the termini of such proposed through route * * *." Appellants assert that the exception as to "where one of the carriers is a water line," contained in said paragraph (4), is

not applicable to the instant case because it should be construed as having reference only to such carriers as are already subject to the Act under section 1 thereof, namely, to carriers "partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment."

1. The Mallory and Morgan steamship lines are already carriers subject to the act under section 1 thereof by reason of arrangements with the rail carriers for continuous shipments and are therefore water carriers within the meaning of the exception even as construed by appellants

Appellants contend that the record before the Commission did not show that the Southern Pacific Company-Atlantic Steamship lines (Morgan lines) or the Mallory Steamship Company are railroad-controlled and for that reason subject to the Act. Disregarding the question as to whether or not these steamship companies are, or either of them is, in fact, railroad-controlled it remains true that both have already entered into arrangements with the rail lines for the continuous transportation of various commodities over the routes that are here involved. (R. 59.) Exhibit 8, before the Commission, (R. 113–116) shows numerous instances of through rates applicable in both directions between New England and Oklahoma and New York and Oklahoma via the Gulf. The testimony of witnesses for the steamship companies shows that the accepted meaning of rates via the Gulf is rates via Galveston and the

Morgan and Mallory lines. (R. 65, 63.) Furthermore, joint through water-and-rail rates were in effect on cotton—the particular commodity under consideration—from Galveston to many cotton manufacturing destinations in the northeastern states (R. 58) and joint through rail-water-and-rail rates on cotton were in effect from interior Texas points via Galveston and New York to the same destinations. (R. 58, 63, 64, 65, 66.) In short the water carriers were parties to arrangements for continuous carriage of freight other than cotton over the identical routes herein involved and were parties to arrangements for the continuous carriage of cotton from intermediate points over the same routes and to the same destinations. *Mutual Transit Co.* v. *United States* (2d Circ.) 178 Fed. 664, 667; *Baer Bros.* v. *D. & R. G. R. R.*, 233 U. S. 479, 490; *United States* v. *Union Stockyards*, 226 U. S. 304, 305; *Cin. N. O. & Tex. Pac. Ry.* v. *Int. Com. Comm.*, 162 U. S. 184, 192.

2. The Mallory and Morgan steamship lines are likewise water carriers subject to the Act under paragraph (13) of section 6 and the mention of water carriers in the exception to paragraph (4) of section 15 manifestly has reference to such water carriers as well as those subject to the Act under section 1 thereof

In view of the express language contained in paragraph (13) of section 6 rendering prospective as well as existing rail-and-water transportation subject to that paragraph, the above discussion as to whether the Mallory and Morgan steamship lines are subject to the Act under section 1 may be regarded as

academic. It is given to show that, even if the contention that the water carriers referred to in paragraph (4) of section 15 should be confined to water carriers as defined in section 1 regardless of other provisions of the Act, were conceded to be correct, the exception removing rail-and-water transportation from the restriction imposed on the Commission's authority by said paragraph (4) is still applicable.

Paragraph (13) of section 6, above quoted, empowers the Commission to establish through routes and maximum joint rates and to establish physical connection between the rail carriers and the dock whenever property *may be* or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, and such authority is stated to be in addition to the jurisdiction given by the Act to Regulate Commerce, as amended June 18, 1910. The language used shows a clear intent to authorize the Commission to establish through routes and joint rates, wherever practicable, without the necessity of the water carriers first voluntarily submitting themselves to the Commission's jurisdiction by entering into arrangements with the rail lines for the continuous carriage of property. Appellants contend, however, that the carriers referred to in this paragraph must likewise be restricted to carriers already subject to the Act under section 1 thereof. The wording of the paragraph would seem to completely refute this contention.

Some effect, at least, must be given to the intent of Congress, expressed in paragraph (13), to confer upon the Commission jurisdiction in addition to that given by the Act to Regulate Commerce, as amended June 18, 1910. The Act, as amended June 18, 1910, contained the same provision, in section 1 thereof, as is now contained in section 1(1) (a) (above quoted), namely, that its provisions "shall apply to any * * * common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) * * *." If the provisions of section 6 of the Act must be qualified by section 1 so as to relate to transportation partly by rail and partly by water *only* when both rail and water carriers are used under a common control, management, or arrangement for a continuous carriage in respect of the particular transportation, no effect would be given to the provision that the authority conferred was in addition to the jurisdiction given by the Act as amended June 18, 1910.

Some effect must be given to the fact that, under paragraph (13), the Commission's jurisdiction attaches whenever property not only is (but may be) transported from point to point in the United States by rail and water. If the Commission's jurisdiction were held to attach only in cases where an arrangement for continuous carriage by rail and water already

existed little or no effect would be given to the purport of the words "may be."

As pointed out in the Commission's decision (R. 36, 37,) such a contention would lead to the absurd conclusion that the Commission might establish a physical connection at a dock between a rail carrier and a water carrier only where the water carrier already had an arrangement for continuous service with the rail line.

The appellants contention is that the exception "where one of the carriers is a water line" to the restriction against establishing through routes which will short-haul rail carriers applies only to such water carriers as are already subject to the Act under section 1 thereof. That exception was introduced into paragraph (4) of section 15 by the Transportation Act of 1920. Accordingly, it would seem that it referred to the water carriers mentioned in paragraph (13) of section 6 which was enacted in 1910, as well as those mentioned in section 1. If, therefore, as has been above shown, the water carriers mentioned in section 6 should not be qualified by section 1, it follows that the mention of water carriers in the exception to paragraph (4) of section 15 should be to the same extent relieved of any such narrow interpretation.

Paragraph (3) of section 15 (above quoted) provides that the Commission may, "and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing" establish through routes, joint classifications, and joint rates, both as

to rail and rail-and-water transportation, except that in the latter case it may establish maximum joint rates only. This paragraph is chiefly notable in that the duty to establish through routes and joint rates is made mandatory whenever the same are necessary or desirable in the public interest. Paragraph (4) of section 15 further recognizes the public interest in the development of water transportation through the establishment of through rail-and-water routes by making an exception in the case of rail-and-water transportation to the general rule that the Commission may not establish through routes which would short-haul a rail carrier. These provisions were added to the Interstate Commerce Act by the Transportation Act, 1920, by which Act Congress likewise announced its policy "to promote, encourage and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation." (41 Stat. 499.) This clearly evidenced intent to encourage rail-and-water transportation is not reconcilable with the narrow construction placed upon the term water lines by appellants.

That the Commission's jurisdiction, particularly that conferred by section 6, paragraph (13), may be exercised to compel rail carriers to furnish the services and facilities necessary or desirable in the public interest in connection with through movements by rail and water, regardless of whether the

rail and water carriers have or have not theretofore voluntarily submitted themselves to the Commission's jurisdiction in respect of the particular transportation, is inferentially upheld by the opinion of this court in *United States* v. *N. Y. Cent. R. R. Co.*, — U. S. —, decided November 22, 1926, which sustained an order of the Commission, entered under said paragraph (13) of section 6, requiring the appellee railroad to furnish transportation services and facilities between the Erie Barge Canal and points on its lines and on the lines of its connections. Although the Commission's order was directed solely to the furnishing of rail transportation its obvious purpose was to promote the through movement of rail-and-water transportation. That paragraph (13) of section 6, in and of itself, clothes the Commission with full jurisdiction in respect of the matters therein mentioned is shown by the following quotation from the opinion, which, since it relates to traffic expressly excepted from the Commission's jurisdiction by section 1 of the Act, namely intrastate traffic, is particularly pertinent to the claim of appellants now before this court that the Commission's jurisdiction over rail-and-water transportation under said paragraph (13) of section 6 is limited by section 1 of the Act to rail-and-water transportation for the continuous carriage of which arrangements have already been entered into by the carriers.

> We have fully considered other objections to the order but only one is of sufficient moment to require mention. It is argued that

the jurisdiction conferred by section 6, par. 13, is limited to interstate transportation while the order directs transportation of both interstate and intrastate traffic. By the terms of this section, the commission is given jurisdiction both of the transportation described and of the carriers, rail and water, engaged in such transportation. By definition, transportation includes "* * * all instrumentalities and facilities of shipments or carriage, irrespective of ownership * * * and all services in connection with the receipt, delivery, * * * and transfer in transit, * * * and handling of property transported." Sec. 1, par. 3, Transportation Act, *supra*, at pp. 474–475.

The commission having jurisdiction over the carriers and the facilities by which the transportation is carried on, the question is narrowed to whether its jurisdiction extends to the entire current of commerce flowing through this terminal although intrastate in part. When we consider the nature and extent of the comingling of interstate and intrastate commerce, and the difficulty of segregating the freight passing through the terminal, we think it clear that Congress in employing such broad language as "the commission shall have full authority to determine and prescribe the terms and conditions upon which these connecting tracks shall be operated" intended to confer upon the commission power to regulate the entire stream of commerce. * * *.

CONCLUSION

The Commission, as incidental to its authority to fix reasonable rates, may prescribe rail-and-water rates on a substantial parity with all-rail rates if evidence in respect of reasonableness calls for such action. The evidence showed that the relative transportation services involved in the respective routes did not warrant rail-and-water rates higher than all-rail rates and further showed that since, under such adjustment of rates the traffic would not flow over the rail-and-water route, the interests of carriers participating in that route required that some consideration be given to the relationship between rail-and-water and all-rail rates. Under such circumstances consideration given to the rates at which similar transportation services were available to shippers did not constitute interference with the general policies of the carriers but was on the contrary an element absolutely inseparable from the reasonableness of the rates, particularly in view of the announced purpose of the Transportation Act, 1920, to develop an adequate transportation service and, in line with that general purpose, to promote water transportation along with rail transportation. Moreover, the desirability of the rail-and-water route in the public interest having been shown by the evidence, the Commission was under mandate of the Act to establish joint rates, and, since the fixing of rates at such level as would not permit of the flow of traffic would have blocked the purpose of Congress just as effectively as would nonaction in the

premises, it was likewise under mandate to prescribe rates at a level which would render the route economically available to the public, in so far at least as such action would not deprive carriers of any constitutional rights. In order to comply with the mandate and, indeed, in order to best serve the carriers' interests in securing some traffic, the Commission had to take judicial notice of the reductions in all-rail rates that had taken place subsequent to the hearing, as evidenced by tariffs of statutory force and effect. These reduced rates, representative of the present level at which similar transportation service was obtainable, could be considered in connection with evidence taken at the hearing, thereby insuring against the prescription of rates unreasonable from the standpoint of the service rendered by the carriers under conditions, at least, obtaining at the time of the hearing. If the relationship shown to exist at the time of hearing between the transportation service over the all-rail route and that over the rail-and-water route had changed the appellants had their opportunity to represent that such was the fact in their petition for rehearing. In the absence of such showing the Commission was warranted in assuming that the relationship remained substantially undisturbed, particularly since its legislative action of fixing rates for the future can not in the nature of things be expected to reflect with detailed accuracy the constantly changing circumstances and conditions under which transportation service is performed.

Paragraph (4) of section 15 restricts the Commission's authority to establish through routes to such as will not short-haul participating rail carriers but it likewise excepts from that restriction through routes "where one of the carriers is a water line." The water lines herewith concerned are carriers subject to the Act both, under section 1 thereof, as having already entered into arrangements with rail carriers for continuous shipments, and under paragraph (13) of section 6, which operates prospectively in that it clothes the Commission with the additional authority of establishing through routes and joint rates whenever property *may be* transported by rail and water in interstate commerce.

We respectfully submit that the decree of the District Court should be affirmed.

DANIEL W. KNOWLTON,
For Interstate Commerce Commission.

P. J. FARRELL,
Of Counsel.

APPENDIX

Before the Interstate Commerce Commission

Docket 13418

HOUSTON COTTON EXCHANGE AND BOARD OF TRADE, et al., complainants.

vs.

THE ARCADE & ATTICA RAILROAD CORPORATION, et al., defendants

PETITION FOR REHEARING

Now come The Atchison, Topeka & Santa Fe Railway Company, The Chicago, Rock Island & Gulf Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Gulf, Colorado & Santa Fe Railway Company, the Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, St. Louis-San Francisco Railway Company, St. Louis, San Francisco & Texas Railway Company and the other carriers defendant in the above proceeding upon whom rests the burden of the expense of gathering the cotton grown in Oklahoma for shipment, and file this their petition to reopen said cause for the purpose of taking further evidence or, in the event such a prayer is denied, for a reargument of the issues presented. In support thereof your petitioners state:

I

The commodity involved is cotton grown in the State of Oklahoma. Joint through all-rail rates,

based originally upon the combination of local rates to and from St. Louis are in effect from Oklahoma to the northeastern portion of the United States. Since the various general increases these through rates are now lower than the combination basis. The joint all-rail rates apply over routes through Chicago, St. Louis, Memphis and other Mississippi River crossings. There are no joint rail and water rates in effect on cotton from Oklahoma through Galveston to the destination territory above described. To New York, the freight charge is composed of the local rail rate to Galveston, the port rate beyond, and a loading charge. To other points in said destination territory, the freight charge is determined by adding to the New York rate the rail rates beyond. It is the absence of joint rates by way of Galveston that prompted the filing of the complaint. Complainants seek in this proceeding joint rates by way of Galveston, the level of which will be enough below the level of the all-rail rates to divert the Oklahoma cotton traffic from the all-rail routes to the routes via Galveston.

II

The complaint shows Houston Cotton Exchange and Board of Trade, Galveston Cotton Exchange and Board of Trade, Galveston Commercial Association, Dallas Cotton Exchange, and Oklahoma Cotton Exchange are complainants, and the complaint was apparently signed in behalf of the Oklahoma State Cotton Exchange by T. H. Pointer, traffic manager. At the hearing Mr. Dalzell, chief witness for complainants, insisted that he was appearing for and representing the views of the Oklahoma State Cotton Exchange. The hearing began on April 20, 1922.

Just prior to the hearing Mr. Dalzell received from Mr. T. H. Pointer, traffic manager of the Oklahoma State Cotton Exchange, the following letter:

> I am to-day in receipt of Mr. West's joint letter of March 17, file A-103, with reference to the above case. It will not be possible for me to attend the conference in Dallas March 30, and on account of the many changes which have occurred in the conditions with respect to the handling of Oklahoma cotton since this matter was first taken up by us in 1919, I feel quite certain that the directors in this association, as well as the freight and transportation committee, may object to our participating. (Rec. 48.)

Neither Mr. Pointer nor any other person representing the Oklahoma Cotton Exchange testified in its behalf or entered tha appearance of that association in this case. These facts are significant, because the undoubted purpose in showing some Oklahoma organization as a party complainant was to convey the impression that as to the movement of Oklahoma cotton the existing facilities and routes by means of which this commodity is laid down in the northeastern destination territory were inadequate and that there was a real commercial necessity for additional routes and facilities in order that the Oklahoma cotton traffic might move with dispatch. There is not a word of testimony to show any commercial necessity for joint through rates by way of Galveston. Mr. Sparks, sales manager for the Oklahoma Cotton Growers' Association, was called to testify at the last minute, but he is a member of the Houston Cotton Exchange. This complaint was not prompted by any commercial necessity for joint rates applicable via Galveston. It was and is the desire

of the Texas middleman to so divert the natural course of the Oklahoma cotton tarffic after it leaves the producers' hands that it will not only pass through Texas but stop at Dallas or Houston in order that the members of the cotton exchanges in those two cities may have an opportunity to increase the volume of the business they transact. We would not criticize those testifying in behalf of the two cotton exchanges in any open attempt to accomplish such purpose. But we do think there should have been more frankness in disclosing the main object of their efforts. Along with the increase in the volume of business is another factor in the handling of cotton of which the middleman does not fail to take advantage.

III

The provisions of the tariffs now in effect provide for the satisfaction by the carriers of what is called a "concentration claim." Cotton originating at the country point in Oklahoma is required to stop at the nearest compress point en route for compression. If the shipper desires to take advantage of the concentration privilege at the compress point it is billed locally to that point and the local rate applicable from the country point to the compress point is assessed and collected. If the shipper of the cotton desires to take advantage of the privilege of concentration at some more distant point en route the cotton is billed to that concentration point, its transportation having been temporarily interrupted for compression at the nearest compress point. In the latter case the local rate from the country station to the concentration point is assessed and collected. When the cotton is sold to an eastern spinning point by the middleman after taking advantage of the concentra-

tion privilege at the concentration point where it may remain from a day to twelve months, it is billed out as a local shipment from the concentration point to final destination and the local rate from the concentration point to final destination is assessed and collected. Thereafter, within the time provided for in the tariffs, the inbound expense bill at the concentration point is matched up with the outbound bill of lading from the concentration point and these documents are filed with the carriers in support of a concentration claim. This claim is for the difference between the sum of the local rates from the country point of origin to the concentration point and from the concentration point to final destination, and through rate from the country point of origin to the final destination. Such a claim is usually filed by the middleman, or in his behalf. He has neither borne the freight charge assessed for the movement of cotton from the country point of origin to the concentration point nor for its movement from the concentration point to final destination. The title to such claim in the hands of the middleman is one of the incidents of the cotton business. We think that is one of the reasons why those complainants who appeared and upon whose behalf testimony was offered desired this Oklahoma cotton to go to destination by way of Galveston. They not only want it to move through Texas, but they want the benefit of concentration either at Dallas, Houston or Galveston. The following appears in the testimony of complainants' chief witness, Dalzell, on page 69 of the record:

> Q. Now, would it satisfy the prayer of your complaint here, if the Commission should establish the through rates that you are asking

for without also giving you the concentration privilege at a Texas point?

A. No, sir, not so long as the rates from Oklahoma to eastern seaboard territory via all rail contains within itself the privilege of concentration.

Complainants do not care so much to have the cotton move through Texas as they do to have the right to stop it at a point in Texas for concentration. That fact seems to us to illustrate the motive back of the complaint and to show that it isn't a question at all of commercial necessity in so far as the ability of the Oklahoma cotton to move to destination with dispatch under the existing facilities. If the testimony showed that the existing facilities and arrangements for the transportation of Oklahoma cotton were inadequate and that the Oklahoma farmers and shippers were not getting all of the common carrier service necessary for the prompt and efficient transportation of the Oklahoma cotton crop, your petitioners realize that they could not successfully and ought not oppose any remedy that would somewhat remove such a handicap even though the remedy would be detrimental to their own selfish interests. But the existing arrangements are amply adequate. The evidence does not warrant any other conclusion. No Oklahoma farmer or shipper has complained in this case that additional through routes and joint rates are necessary or that the public interest or commercial necessity requires them.

The four important carriers in the cotton section of Oklahoma are the Missouri-Kansas-Texas Railroad Company, The Chicago, Rock Island & Pacific Railway Company, the St. Louis-San Francisco Railway Company, and the Santa Fe System, composed of The Atchison, Topeka & Santa Fe Failway Com-

pany and the Gulf, Colorado & Santa Fe Railway Company. These companies have their own rails to Chicago, St. Louis, or Memphis. The Rock Island has its own rails to all three of these points. Cotton is an important item of traffic to the Oklahoma carriers. Fifty per cent of the cotton is for export moving through the Gulf. The majority of the remainder goes to seaboard territory. Thus the Rock Island and the Frisco are denied the long haul on 50 per cent of this traffic. On traffic to the Gulf ports, the Rock Island obtains a haul only as far as Fort Worth or Dallas, to which the distances from the compress points in Oklahoma range from 112 to 388 miles. From the same points to Memphis, the hauls range from 366 to 642 miles; to Chicago, 907 to 1,172 miles; and to St. Louis, 691 to 956 miles. Because of the expense incurred in assembling the cotton and other conditions peculiar to that traffic, your petitioners state that joint through rates by way of Galveston with a concentration privilege at some Texas point are not warranted. About 90 per cent of the cotton originates at country points, from which it is moved in small lots to the compresses, an average distance of 60 to 70 miles. This requires a large number of cars, and to conserve equipment compression is ordinarily required at the first compress point. The assembling cost is estimated to be 50 per cent of the total transportation cost of cotton over the Rock Island, for which it receives no extra compensation. Your petitioners state that the only manner in which they can be compensated for this extra expense is to move the cotton over those routes via which they receive the long haul. If joint rates are established the transfer expense at both the Gulf and northeastern points must be absorbed. There

is already a heavy movement of cotton to Galveston during the fall with an empty return movement northbound, which the proposed joint rates would increase. Your petitioners desire to explain to the Commission in detail the manner in which cotton is handled from the country point of origin to and through the compress and concentration points and to show how their claim that the assembling cost is 50 per cent of the transportation cost is borne out by the facts. It is unjust and unfair to require petitioners to assume the burden of this exceptional assembling cost and at the same time require them to surrender the opportunity to use their facilities to the fullest extent when they may be satisfactorily used. In order to be compensated for the heavy gathering cost of cotton, petitioners ought to be permitted to move it over routes where they receive the long haul and particularly is this so when the cotton may reasonably so move.

IV

Complainants' case is predicated entirely on the proposition that rail and water rates should be so equalized with the all-rail rates that, even considering the extra costs by water, such as insurance, etc., the rates will nevertheless be made low enough to induce the movement of cotton via the water route. Ordinarily rail and water rates are lower than all-rail rates and necessarily so to attract the traffic, but there is no principle that requires such a relationship or authorizes the Commission to compel lower rates by water. There is no evidence whatever in this record to justify a finding that any fixed differential should be established between the rates via the all-rail routes and those applying partly via rail and

partly via water. If the Commission should order in the joint rates prayed for from Oklahoma it would result in giving Oklahoma shippers, without any request on their part, the benefit of the Texas common point rates on cotton via the Gulf. There can be no justification for such an adjustment of rates as that.

V

Under the facts as shown by the record in this case and under the law the Commission is without jurisdiction to require your petitioners to enter into or establish joint rail and water rates on cotton from Oklahoma through Galveston or other Texas ports to seaboard territory.

Wherefore, your petitioners urge the Commission to reopen said cause for the purpose of taking further evidence, or, in the event this prayer is denied, your petitioners respectfully request a reargument of the issues presented.

Respectfully submitted.

F. E. ANDREWS,
C. S. BURG,
M. G. ROBERTS,
A. B. ENOCH,
Attorneys for Petitioners.

CHICAGO, April 12, 1924.

○

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WM. R. STANSBURY
CLERK

IN THE

Supreme Court

of the United States

October Term, A. D. 1926.

No. 190

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY and ST LOUIS-SAN FRANCISCO RAILWAY COMPANY,
Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, HOUSTON COTTON EXCHANGE & BOARD OF TRADE, and DALLAS COTTON EXCHANGE,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

BRIEF FOR

HOUSTON COTTON EXCHANGE & BOARD OF TRADE
And DALLAS COTTON EXCHANGE, *Intervenors.*

By R. C. FULBRIGHT,
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Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

BRIEF FOR

HOUSTON COTTON EXCHANGE & BOARD OF TRADE And DALLAS COTTON EXCHANGE, *Intervenors.*

PRELIMINARY STATEMENT

The Houston Cotton Exchange & Board of Trade and the Dallas Cotton Exchange are intervenors in this proceeding under leave granted by the District Court of the United States for the Northern District of Texas. In this proceeding they were the principal complainants who filed

the petition with the Interstate Commerce Commission in the proceeding known as I. C. C. Docket 13418, *Houston Cotton Exchange and Board of Trade et al. vs. Arcade & Attica Railroad Corporation, et al.*, in which the orders were entered which are the subject of consideration in this appeal.

These intervenors are organizations of dealers in cotton who purchase cotton in Oklahoma and ship the same in interstate commerce to various destinations including the destinations in New York and New England territory which is the territory involved in the order of the Interstate Commerce Commission. Other interests joined with them in the trial of the case and it is important, first of all, to determine just what issues were before the Interstate Commerce Commission and upon what authority of the law the Commission undertook its action.

I

THE ISSUES INVOLVED

Before referring to the complaint it is well to briefly state the situation which gave rise to this proceeding. For many years the railroads which serve Oklahoma have published through joint all rail rates on cotton from points in Oklahoma to destinations in New York and New England. These rates are also applied as through joint rates via the rail carriers from Oklahoma to South Atlantic Ports, and thence via water carriers to New York and Boston, beyond which rail carriers operate to the particular destinations. In about 1911 reduced rates on steamship lines applying between the Texas ports and the North Atlantic Ports brought about a situation where the local rail rates from Oklahoma to the Gulf, the water rates, and the local rates beyond the destination ports, were substantially less than the through joint rates previously established, as result of which the through rates fell into disuse and were cancelled out during the period of government control of railroads. Subsequent increases in the local factors brought about combination rates for this service which were substantially higher than the through all rail rates and the through rail and ocean rates via the South Atlantic Ports, as result of which the intervenors, together with other interests, petitioned the Interstate Commerce Commission to establish through routes and joint rates via the Texas Gulf Ports, and alleged that reasonable rates for such service would be rates that were not less than 4 cents per 100 pounds under the current all rail rates. The reason for this basis was that the transportation rates via the water lines from the gulf ports does not involve insurance of the commodity and the shippers have to pay insurance in addition to the rates,

whereas the previously established through rates are insured rates in all instances.

The complaint in question set up, first, that the defendant carriers, which included some eighty-four rail and water carriers, did not publish through joint rates; second, that the failure to provide such through rates resulted in requiring petitioners to pay combinations of local rates which resulted in unjust and unreasonable charges; and it was further alleged that defendants had been requested to establish such through joint rates but had wholly failed to do so. The following excerpts show the pertinent parts of the complaint and may be found by reference to Exhibit A attached to the bill of complaint in this proceeding.

V

"That although said defendant carriers participate in the transportation of cotton and cotton linters on through movements from said points of origin to said points of destination through the port of Galveston, Texas, and other Texas ports, and have arrangements for the carriage of the same, nevertheless *they do not publish or file with the Interstate Commerce Commission and do not apply joint through commodity rates* upon the same for such movements via rail and water routes through Galveston and other Texas ports.

VI

"That by reason of *the failure of the defendants to provide joint through commodity rates* applying via rail to the Port of Galveston and other Texas Ports, and via water to North Atlantic ports, and via rail or water or rail and water from such ports, complainants and all other persons shipping cotton and cotton linters via such routes, are *required to pay combinations of local rates,* which rates are found in Southwestern

Lines' Tariff No. 80-E, F. A. Leland's I. C. C. No. 1467, and supplements and reissues thereof, and in W. J. Sedgman's I. C. C. No. 135.

VII

"That by reason of the premises, the defendants exact from the complainants and other shippers, unjust and unreasonable rates for the transportation of such cotton and cotton linters."

VIII

"That complainants *have heretofore requested defendants to re-establish through joint routes and through just and reasonable rates and the defendants have wholly failed and refused so to do.*"

The prayer of the complainants was for the establishment of through *joint* rates, and reads as follows:

"Wherefore complainants pray that defendants may be severally required to answer the charges herein; that after due hearing and investigation an order be made *commanding defendants, and each of them, to establish just and reasonable through joint rates* for the transportation of cotton and cotton linters from the points of origin above named to the points of destination above named; and to cease and desist from the aforesaid violations of said Interstate Commerce Act, *and to establish and apply in the future such rates as the Commission may deem reasonable and just;* and that such other and future order or orders be made as the Commission may consider proper in the premises."

While the complaint made no specific reference to any section of the Interstate Commerce Act except section 1, nevertheless the acts complained of were clearly the refusal of the carriers to establish through routes and reasonable

joint rates, and the request was for the Commission to require this to be done. The opinion of the court below, which is set forth in the appendix to the brief for appellants, specifically sets forth various provisions of the Interstate Commerce Act which are applicable in the premises. The burden of the entire case on hearing before Commission showed that the main issue was to require the establishment of additional through routes on cotton moving from Oklahoma to the destination territory, which through routes in order to be available to shippers would have to be on rates not substantially higher than existing rates via other through routes, and that the rates which would be 4 cents under the all rail rates would be reasonable for the service involved. The question of establishment of through rates and the fixing of the level of those rates was debated pro and con in the briefs filed below and was undoubtedly the crux of the whole case in the hearing, briefing, and argument before the Interstate Commerce Commission.

Paragraph 3 of section 15 of the Interstate Commerce Act is quoted in part below.

> "(3) *The Commission* may, and it *shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes,* joint classifications, *and joint rates,* fares or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charged *(or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares and charges applicable thereto),*" (Italics ours.)

It therefore appears that there was before the Interstate Commerce Commission the question of the reasonableness and propriety of requiring the defendants to establish ad-

ditional through routes and joint through rates and the question as to what the measure of such joint through rates should be. The Commission held a hearing at which the appellants in question introduced evidence and other defendants introduced evidence. The Commission rendered a decision and upon petition of the appellants reopened the case for further argument, at which time the appellants, for the first time, raised the question of the authority and jurisdiction of the Interstate Commerce Commission. After this the Commission rendered its further decision and issued an order in the case commanding the various defendants to establish the through routes and joint rates as to a part of the destination territory involved in the complaint. All of the defendants acquiesced in the finding and order of the Commission except the two defendants who are appellants in this proceeding. They undertook to enjoin the order in the District Court of the United States for the Southern District of Texas and after hearing and argument before Circuit Judge Foster and District Judges Estes and Atwell injunction was denied, from which they have perfected this appeal to the Honorable Supreme Court of the United States.

I

THE INTERSTATE COMMERCE COMMISSION HAS LEGAL POWER TO ESTABLISH THROUGH JOINT RATES VIA A GIVEN ROUTE WHICH ARE EQUAL TO OR ARE RELATED TO EXISTING THROUGH RATES PUBLISHED VIA OTHER ROUTES.

The appellants assert that the Interstate Commerce Commission does not have legal power or authority to establish through joint rates via a given route which might be equal to or related to through joint rates theretofore published between the same termini over some other route. In other words, it seems to be the theory of the appellants that the Commission in considering the propriety of requiring the establishment of additional through joint routes via common carriers engaged in interstate commerce cannot take into consideration the level of the rates via existing routes and relate the rates to those applying already over the other routes. Appellants do not question the authority of the Commission to establish additional through routes and joint rates where the Commission finds after hearing that the same are in the public interest, but the assertion is made that this power does not involve the power to prescribe rates over the new routes which would be equalized or related to existing rates via existing routes between the same termini. They do not question the power of Congress to delegate such authority to the Interstate Commerce Commission, but apparently assume that the existing rates via existing routes are not to be taken into consideration. If this were true, then the authority granted by Congress under that portion of section 15 of the Interstate Commerce Act above quoted would be an empty and useless authority. In other words, if the Commission should be authorized to

establish additional through routes when considered to be in the public interest, but could not take into consideration the relation of rates between the new route and those that already applied via existing routes, the procedure of establishing the through routes would, in many cases, be wholly futile. For example, certain carriers might publish a through joint rate over a certain route between two points, of 90 cents per 100 pounds, and upon complaint, or upon its own initiative, the Interstate Commerce Commission might find that another route would be a reasonable and proper route and should be established in the public interest. If it could give no consideration to the rates over the existing route, it might fix a rate of one dollar per 100 pounds for application between the same termini, in which event the additional route, being substantially higher, would be of no use to the public.

It was doubtless for this reason that Congress incorporated such emphatic authority in paragraph 3 of section 15 by saying that the Commission should establish joint rates and also the "maxima or minima, or maxima and minima, to be charged." Only one modification of this authority was made and that was in the case where the proposed through route to be established should embrace a water carrier, in which event the Commission has authority only to establish the maximum rate or charge applicable thereto. This was doubtless enacted for the reason that it was not considered in the public interest to authorize the Interstate Commerce Commission to fix minimum rates for water carriers. Whatever the intention, the fact remains that Congress has specifically given to the Commission the authority to fix the rates. It is also indisputable that unless the rates via the additional route are closely related to the rates via existing routes, the benefit of either the existing routes

or the new routes will not be realized. In considering equalization the Commission must, of course, act within its power to establish reasonable rates, and if it should be shown that the rate fixed is unreasonably low, then the carriers can attack the same as confiscatory. However, within the zone of reasonableness the Commission is the judge, and so long as there is any substantial evidence before the Commission as to the level of the rates to be applied over the proposed new through route, then it is not within the province of the courts to disturb its finding. An additional route is considered as being important in giving to the public an additional channel of commerce and must necessarily be on substantially the same level as existing routes, if both channels of commerce are to remain open as free agents in the movement of such commerce. The mere fact that the Commission may have taken into consideration the question of the level of the existing rate via the other route does not indicate that its finding is unlawful where that finding fixes what the Commission determines to be a reasonable rate for application over the new route.

The authority of the Commission to require the establishment of such through routes has been fully established by this Court in its decision in the case of *St. Louis Southwestern Railway Co., et al., vs. United States*, 245 U. S. 136 (62 Law Ed. 199). In that case there were certain routes applicable from certain territory in the Southwest to Paducah, Kentucky, via Cairo, Illinois, and the complainants requested the establishment of through routes via Memphis. The Commission ordered the establishment of the routes and the carriers sought to enjoin the Commission. They contended that there were existing routes and that there was no necessity for the establishment of the through routes and joint rates via Memphis. They also insisted that

the Commission would have to find first that the routes through Cairo were unreasonably long as compared with the routes through Memphis. They further attacked the authority of the Commission to fix the same rate via the route through Cairo, and asserted that the order compelled two long lines to meet a short line rate which involved a greater service and therefore produced a discrimination between the carriers. All of these contentions were overruled by the court, and we here give the following excerpts from the opinion bearing on this question.

> "First: The carriers deny that the Commission has the power to compel them to establish through routes and joint rates. It is admitted that all the complaining carriers were interstate railroads and were engaged otherwise in interstate commerce. It is undisputed that for many years there has been over the lines of two of these carriers a through route to Paducah via Cairo, and over the other a through route via Memphis; and that on all the lines there were through rates. But it is contended that if a carrier establishes a through route and joint rate with its connections, it creates in effect a relation of partnership; that this relation must be entered into, if at all, voluntarily; and that to 'compel a carrier chartered by a state' to enter into such a relation with a carrier chartered in another state violates the 5th Amendment of the Federal Constitution.
>
> "The complaining carriers having engaged in this particular commerce, it is clear that Congress has power to regulate it. *Atlantic Coast Line Case*, 219 U. S. 186, 55 L. Ed. 167, 31 L. R. A. (N. S.) 7, 31 Sup. Ct. Rep. 164. No reason appears why the regulation might not take the form of compelling the substitution of a joint rate for a through rate made by a combination of local rates or by a combination of a local rate with a joint rate to an intermediate point."

"That Congress has power to authorize the Commission to enter an order for through routes and joint rates, like that here complained of, has been heretofore assumed. No reason is shown for questioning its existence now."

The authority of the Commission was also contested by the American Railway Express Company in another case which was decided by the Supreme Court in 1924, where the court affirmed the holdings in the case above quoted. This was the case of *United States vs. American Railway Express Co.*, 265 U. S. 425 (68 Law Ed. 1087). In this case the question involved was the establishment of an additional or competitive through route.

While the court held that the competitive route must be reasonable in character from the standpoint of transportation, yet the peculiar function of the Commission was to determine these matters. It is significant that in the present case the appellants have not made the contention that the routes via the gulf are unduly long, but on the other hand, the evidence showed that they were already applying through routes and joint rates via South Atlantic Ports which were indeed longer than the routes sought to be established via the Texas Ports. In the case just cited the objection was made by the Express Company that the existing routes were sufficient and that the time for delivery under existing routes would be as short or shorter than it would be under the competitive joint routes which the Commission undertook to establish. The Supreme Court dealt with this contention in the following excerpt, which we quote from the opinion.

"The objection is made that, as a matter of law, the competitive routes cannot be justified because the time required for delivery over the existing routes of the American is as short as it would be under the competi-

tive joint routes. To this objection the action taken by Congress supplies an answer. Under the Act of 1906, the Commission could act only if no 'reasonable and satisfactory through route exists.' In *Interstate Commerce Commission vs. Northern P. R. Co.* 216 U. S. 538, 54 L. Ed. 608, 30 Sup. Ct. Rep. 417, this court set aside an order to establish a second through route because it deemed the existing one adequate. Thereupon, Congress, by the Amendment of 1910, struck out the proviso and empowered the Commission to establish through routes 'whenever deemed by it to be necessary or desirable in the public interest.' In transportation, the quality of the service furnished may be as important to the shipper as the rate. The Commission found, in the proceeding under review, that the service of the American, in some instances, had been inadequate; and that, in 'considering competition, time is not the only important element. Competition tends to make each company improve its general treatment of the public, its practices, rules and regulations in regard to its methods of doing business.' It found, also, that the 'service at common points has improved since the formation of the Southeastern.' It's conclusion that the establishment of the competitive routes was necessary and desirable in the public interest is not shown to have been unreasonable.

"The existence of a competitive route ordinarily implies an option in the shipper. To give him the privilege of directing the routing is a corollary of the establishment of competitive routes. Upon shippers of railroad freight this right was expressly conferred by Congress, in par. 8 of sec. 15, subject only 'to such reasonable exceptions and regulations' as the Commission may prescribe. The rights, in this respect, of shippers by express, were not dealt with in terms. The matter was, therefore, left subject to regulation by the Commission under general provisions of the act. Paragraph 3, which empowers the Commission to establish through routes, authorizes it, also, to fix

'the terms and conditions under which such through routes shall be operated.' Its order that the shipper by express may direct the routing is not unreasonable."

It therefore appears that the law is well settled that the Commission may order such additional routes as seem to it to be in the public interest. The shippers in this case invoked this authority and asked for the establishment of such routes. The right to establish these routes carries with it the authority to fix the rates over the routes. The Commission found them to be reasonable routes and fixed what it considered to be reasonable rates and in so doing acted within the precise scope of its authority as recognized in the foregoing decisions and by the wording of the statute itself.

II

THE INTERSTATE COMMERCE COMMISSION PROPERLY ASSUMED THE AUTHORITY TO PRESCRIBE THROUGH JOINT RATES VIA THE GULF ROUTES WHICH WERE SUBSTANTIALLY EQUIVALENT TO THE ALL RAIL THROUGH JOINT RATES.

The appellants make the further contention that if the Interstate Commerce Commission did have the power and authority to prescribe through joint rates which were substantially equivalent to or related to existing all rail rates via existing routes yet its order is void because the power was not invoked, in the proceeding. This contention would appear to be based upon the expression in the statute that the Commission may act only "after full hearing upon complaint or upon its own initiative without a complaint." In the first place, paragraph five of the complaint complains of the failure of the defendant carriers to publish or file and apply joint through commodity rates for the transportation of cotton from said points of origin to said points of destination through the Texas Ports, though it is alleged that they have arrangements for the through carriage of same. Paragraph six states that by reason of their failure to provide such through rates the shippers using such routes are compelled to pay combination of local rates and that these aggregate rates are unreasonable. Paragraph eight sets forth that the complainants had previously requested the defendants to establish the through joint routes and through just and reasonable rates and the prayer is that the defendants be required to establish just and reasonable through joint rates. It is undisputed that there were no through joint rates on cotton and it is undisputed that

there were movements of cotton under an arrangement consisting of a through bill of lading applying via the Texas ports from the origin territory to the destination territory. The purpose of the complaint was to require the establishment of the through joint rates and through route or routes which would be competitive with the existing all rail routes and rail and ocean routes via the South Atlantic ports. The complaint could have had no other primary purpose. We fail to find in appellants' brief any contention that they were not properly apprised of this issue and on the other hand they introduced affirmative evidence in support of the contention that the additional through routes were not necessary or in the public interest. The issue was squarely joined and having been squarely joined and having been considered by the Commission there was the opportunity for a full hearing and the Commission properly exercised the power, whether it had been properly plead by complaint or not for the simple reason that the law states that the Commission may establish these rates upon its own initiative. In fact, nowhere in the appellants' brief is it stated that they did not have opportunity for a full hearing and no such contention was made before the Interstate Commerce Commission.

At page 27 of the appellants' brief they specifically admit that the complaint involved Section 15 for the purpose of calling upon the Commission to establish reasonable joint rates but it is stated that since no violation of Sections 2 or 3 relating to discrimination were alleged that the Commission would not have the authority to act by establishing a through joint route and rate which would be equalized with an existing route.

The appellants' brief phrases the contention in the following language: "There was no issue raised by the com-

plaint which called upon the Commission to determine relationships or to establish fixed differentials or to equalize different routes." (Page 27 of appellants' brief) The contention is that the equalization of the different routes brings in other issues than those involved in Sections 1 and 15 of the Act. The answer to this is that the Commission could not establish an additional route without taking into consideration the level of rates via existing routes and also the reasonableness of the application of the same rates or an equalized rate via the new route. This is the primary purpose for asking for an additional route and as stated by the Supreme Court in the case of *United States vs. American Railway Express Company* (cited supra) that although the Commission under the former law could act only in the absence of other reasonable and satisfactory through routes, yet "Congress, by the amendment of 1910, struck out the proviso and empowered the Commission to establish through routes whenever deemed by it to be necessary or desirable in the public interest."

Appellants cite as their authority for the position taken in their brief, as shown in the above quotation therefrom, the case of *Oregon Railroad and Navigation Company v. Fairchild*, 224 U. S. 510 (56 Law Ed. 863). A careful reading of this decision fails to disclose how it may be considered in any manner as supporting the proposition stated by the appellants. The case arose through a complaint filed by the Attorney General of Oregon with the Railroad Commission of that state seeking additional track connections between two railroads. The evidence in behalf of the complaint was undisputed to the effect that one connection would be sufficient and that one connection already existed. Nevertheless, the Railroad Commission issued an order for additional connections. While the Supreme Coure reversed

the decision upon the grounds that there was no evidence to support it, nevertheless, it held very clearly that there was no merit in the contention of defendant that it did not have opportunity for a full hearing. There was no question involved in the case as to extraneous issues being the basis of the decision of the Commission, but there was a question raised as to whether or not the law of Oregon provided an opportunity for an adequate judicial review of the action of the Commission and the court held that the contention was not well taken for the reason that the defendant had been put on notice as to what sort of an order was asked for and the order given accomplished the very thing that the complainant sought. The fact that the Commission may have acted without evidence was an entirely different proposition and there is nothing whatever in the decision to support the contention of the appellants. Again, we reiterate that the Commission can properly consider the level of rates via existing routes and determine whether or not related or equivalent rates would be reasonable and proper for application via the new route, and there is not one authority cited in the brief of appellants which holds otherwise.

The brief of appellants clearly recognizes that the act of the Commission was in fact to establish rates which were substantially equivalent to the existing all rail rates for the reason that some lower rates had to be made for rail and water movement to allow for the difference in insurance premiums. The following excerpt from appellants' brief shows this very clearly.

> "But rates over the rail-and-water routes lower than the all-rail rates by an amount equal to the Insurance Company's premium on insurance would place the two on a parity. That would enable them to bring Okla-

homa cotton into Galveston, Houston or Dallas and thereafter dispose of it in the northeast on an equal basis with the cotton that moved all-rail. In effect, they asked the Commission to equalize the rail-and-water route with the all-rail route, just as the Commission has stated. This request occupied the consideration of the case by the Commission. The Commission found it could equalize rail-and-water rates with the all-rail rates to New England, and required that rates to such points should be constructed on the basis sought by complainants."

(Appellants' brief, pages 25 and 26.)

The foregoing excerpt shows that the Commission did fix an equalized rate via the new route to be established by its order and the equalization process involved the question of determining whether or not the application of the equivalent rates over the new route would be just and reasonable rates and if so, then the mere fact that it did consider the question of equalization in connection therewith could have no possible bearing upon the validity of the Commission's order.

III

THERE WAS EVIDENCE TO SUPPORT THE EXERSISE OF THE COMMISSION'S POWER AND AUTHORITY IN THIS PROCEEDING.

The appellants undertake to dismiss the proceedings with the statement that there was no evidence to support the order of the Commission in the proceedings. We shall not go into this question in any substantial detail for the reason that it is expected that the Government's brief will deal more specifically with this point, but we do wish to call the attention of the court to the fact that numerous and voluminous rate exhibits showing rates on cotton and other commodities in this and other territories were introduced both by the complainants and by the appellants in this case. The testimony of various witnesses, including witnesses for some of the defendants went into the question of the service involved in the route to be established. The contention was made by witnesses representing water carrier defendants in the case that the rates should and properly could be made via rail and water through the Texas Gulf Ports at least 8 cents lower than the all rail rates applying from Oklahoma to the territory in question. Reference is here made to the testimony of Witness William Simmons, General Freight Agent of the Southern Pacific Company Atlantic Steamship Lines as shown at pages 96 to 100 of the original record. The Commisison recited some of the evidence as to the rate situation in its first decision in the case which decision is set forth as Exhibit "C" in the bill of complaint in this proceeding. We quote the following excerpt from the decision of the Commission as it is set forth at pages 45 and 46 of the bill of complaint in this proceeding:

"Distances via all-rail routes through St. Louis to representative eastern points are contrasted in the following table, compiled from complainants' exhibits of record, with the constructive distances through Galveston:

FROM	TO NEW YORK		ALBANY		BOSTON		BALTIMORE	
	All Rail	Rail and Water	All Rail	Rail and Water	All Rail	Rail and Water	All Rail	Rail and Water
Oklahoma City	1,611	1,240	1,573	1,382	1,773	1,473	1,478	1,428
Chickasha	1,650	1,210	1,612	1,352	1,812	1,443	1,517	1,398
Ada	1,605	1,177	1,567	1,319	1,767	1,410	1,472	1,365

"From most Oklahoma points a rate of $1.15 to both St. Louis and Galveston; from Galveston to New York, the rate by water is 50 cents. The all-rail rates from the Oklahoma points to New York is $1.665; the rail-and-water rate is $1.65. *To points west of New York City the all-rail rates are lower; to practically all of New England a blanket rate of $1.695 applies.* While the all-rail and the rail-and-water rates to New York are approximately the same, the rates by water to other points in seaboard territory vary in amounts according to the distance from New York and are higher than the all-rail rates. To the points more distant from New York City the rail-water-and-rail rates reach a maximum of 56 cents above the all-rail rates." (Italics ours.)

In the report of the full Commission on the reconsideration, copy of which is contained as Exhibit "D" at page 51 of the bill of complaint, the following opening sentence of the Commission's opinion summarizes what was found in the original report and the decision re-affirms the original finding:

"In our original report, 87 I. C. C. 392, we found that it was desirable and in the public interest that the defendants should establish joint rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to points in New England territory and that the rates

would be unreasonable to the extent that they exceeded rates constructed by the deduction of 4 cents from the all-rail rates."

Appellants in their brief claim that additional action was taken by the Commission in forming its judgment of the relative service involved via the rail and water routes as contrasted with the service via existing routes, in that the Commission assumed that three water miles were equivalent to one rail mile. Appellants brbief at page 36 concedes that in at least two cases previously the Commission had set the precedent of using this ratio, but complain that no effort was made to justify the propriety of its application in fixing the rates in this case. Perhaps, the best answer to this contention which is raised for the first time on appeal is that the basis used is a recognized basis under the prior decisions and was asserted by complainants' witnesses to be proper, while on the other hand, the witnesses for the appellants, who were defendants, not only did not question the propriety, but as a matter of fact the leading witnesses for one of the appellants introduced and filed rate comparison exhibits in the case in which the same ratio of three to one for water transportation service was employed. We refer to the Exhibits 20 and 21 introduced in evidence by Witness Strupper, a traffic official of the St. Louis-San Francisco Railway, appellant herein.

There was also other evidence in the case dealing with the relative service. Obviously, it is difficult to determine the exact ratio of a mile of water transportation to a mile of rail transportation, but it is generally conceded that water transportation cost is very much less than rail transportation cost per mile, especially where long distances are involved. We desire to refer to Mr. Dalzell's testimony on pages 11 and 12 of the record, as follows:

"At this point I want to refer to *Southwestern Shippers Tariff Association vs. A. T. & S. F.* 24 I. C. C. 570, in which the question of the relationship between rail miles and water miles was considered. The plaintiff contended that rail miles were as one to seven water miles. The carrier defendants held for a relationship of one rail mile to three water miles. The Interstate Commerce Commission in rendering their decision chose to treat the distance from New York to Galveston as being equivalent to 350 rail miles. We feel that we have ample justification for regarding the distance of figuring the distance from Galveston to New York as being 350 miles, but in order to avoid any controversy we chose to make 727 miles which is a relationship of three to one, as contended for by the railroad defendants in 24 I. C. C. 570."

Furthermore, the Commission apparently took note of the testimony on this point of Mr. William Simmons, General Freight Agent of the Southern Pacific Company Atlantic Steamship Lines on page 102 of the record, as follows:

"Our rate on cotton from Galveston to New York, that is, compressed cotton, with no allowance for compression, on September 1st, 1920, was 66½ cents per hundred pounds. That rate today is 30 cents and reference has been made to the rate of 25 cents applying as proportional basis for exports Galveston to New York. It seems to me that to show service performed on routes via Gulf we take as representing the mileage of the Gulf lines or the Morgan Line, maximum rate which we have had in effect 66½ cents, and construct your mileage via through rates by comparing that with the mileage Oklahoma to Galveston over which the rate of say $1.15 applies."

The Commission had before it substantial evidence and referred to such evidence in its decision. The lower court without any dissenting opinion from any one of the judges

states that "the contention was quite within the jurisdiction of the Commission, and its carefulness and exhaustive investigation, and the completeness of the orders issued by it, preclude any thought of arbitrariness or of unreasonableness."

The decisions of this court in support of the proposition that the findings of the Commission when supported by any substantial evidence are conclusive are so numerous and so well known to the court as to dispense with the necessity of discussing the same. We cite the following as some authorities:

Seaboard Airline Co. vs. U. S. 245 U. S. 57

Manufacturers Railway Co. vs. U. S. 246 U. S. 457

New England Divisions case, 261 U. S. 184

United States vs. New River Co. 265 U. S. 533

Virginian Railroad vs. U. S. decided December 13, 1926, page 257 of the Advance Opinions, dated January 1, 1927, Volume 71 Law Ed.

Chicago I. & L. Railway vs. U. S. 70 Law Ed. 285

Akron C. & Y. Railway vs. U. S. 261 U. S. 184 (67 Law Ed. 605)

U. S. vs. Illinois Central Railway, 265 U. S. 515 (68 Law Ed. 417)

In the case of the *Illinois Central vs. Interstate Commerce Commission*, 206 U. S. 441 (51 Law Ed. 1128) this court says:

> "The statute gives prima facie effect to the findings of the Commission and when those findings are concurred in by the circuit court, we think they should not be interfered with, unless the record establishes that a clear and unmistakable error has been committed."

IV

THE OPINION AND ORDER OF THE COMMISSION IS WHAT IT PURPORTS TO BE AND IS NEITHER IN FORM NOR SUBSTANCE BASED UPON QUESTIONS OF DISCRIMINATION.

The burden of appellants' case seems to lie largely in asserting that the opinion and order of the Commission indicate that the Commission was undertaking to decide questions of discrimination and preference under Sections 2 and 3 of the Interstate Commerce Act and that such considerations were the real basis for its opinion. The appellants aver that the order is void because while it purports to deal with the questions of reasonableness and the propriety of establishing additional through routes, it is in fact dealing with questions of discrimination which were not brought in issue by the pleadings nor made the subject of competent evidence before the Commission.

In the first place it is impossible for us to realize how Sections 2 and 3 might be involved in the case. Section 2 deals with discrimination as between different shippers and Section 3 with discrimination as between different localities. In either case had allegations of discrimination been made the simple answer of the defendants would have been that they already maintained available routes via all rail and rail and ocean which were available to any shipper and to the localities at points of origin and points of destination involved. The question of whether or not an additional through route should be established is one to be determined upon the public interests and upon the necessities of commerce of which the Interstate Commerce Commission is made the judge under the statute. These are wholly different questions from discrimination and the mere

fact that the question of the level of the rates on the additional route may be up for consideration does not in any way suggest that discrimination under Sections 2 or 3 may be involved in substance or in form. The conclusion of the Commission upon this is thus made in its opinion set forth at page 50 of the bill of complaint herein:

> "Upon all the facts of record we are of opinion and find that it is desirable in the public interest that the defendants should establish joint rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to points in New England territory, and that the existing rates for such transportation are, and for the future will be, unreasonable to the extent that they exceed or may exceed, rates constructed by the deduction of 4 cents from the present all-rail rates. We further find that the rail-and-water and the rail-water-and rail rates on cotton from Oklahoma points to other points in the northeastern portion of the United States are not unreasonable."

The appellants rely upon the case of *Southern Pacific Co. vs. Interstate Commerce Commission* 219 U. S. 433 (55 L. Ed. 283) referred to at pages 24 and 25 of their brief. That case was brought under Section 1 of the Interstate Commerce Act and it was alleged that the rates assailed were unjust and unreasonable in violation thereof. Notwithstanding this positive allegation, as shown by pages 445 to 448 of the court's opinion, it was clearly admitted on behalf of the complainant that the rates assailed were not only not unreasonable but were actually less than reasonable. The complainant's case rested upon the theory that by long continuance of the former rates the carriers were estopped to increase them. The Commission, despite these admissions by the complainant, found that the rates assailed were unreasonable. The court concluded that the Commission's decision was not predicated upon matters

usually considered in determining questions of unreasonableness but was placed solely upon the question of estoppel and reversed the decree of the lower court which had sustained the order of the Commission.

We are unable to determine the appellants' theory under which that case might be considered an adverse authority to the Commission's order in the case in hand. It is alleged at page 24 of appellants' brief that "the order is not, even in form, an order prescribing reasonable rates, *per se*." If this were true, it completely dispels the appellants' argument that while the order purports to do one thing it in reality does another. As shown by the above quotation from the Commission's first decision in this case, the Commission found that "it is desirable in the public interest" that the defendants should establish joint rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to points in New England territory. The Commission also found that "the existing rates for such transportation are and in the future will be unreasonable to the extent they exceed or may exceed rates constructed by the deduction of 4 cents from the present all-rail rates." The principal question involved in this case was whether it is desirable in the public interest for the additional route to be established. In deciding this question the Commission also decided what charges and revenues would be reasonable for the defendants for transportation via this additional route.

It is patent that the Commission was exerting its power to establish reasonable rail-and-water and rail-water-and-rail rates from the origin territory to the destination territory involved in this case. Their whole decision shows that this was what they were considering. The premise upon which the determination of this question rested was whether it

was desirable in the public interest. This the Commission decided in the affirmative and that the Commission considered the all-rail rates less 4 cents per 100 pounds as just and reasonable for application via the new route to be established is beyond question, subject to the proviso, set forth by it that the defendants be not required to establish rates over the new route lower than $1.50 per 100 pounds.

V

THE COMMISSION HAD AUTHORITY AND POWER TO REQUIRE DEFENDANTS TO ESTABLISH ROUTES WHICH WOULD EMBRACE LESS THAN THE ENTIRE LENGTH OF LINE OF RAILROAD OF A DEFENDANT, BETWEEN THE TERMINI OF SUCH PROPOSED THROUGH ROUTE, WHERE ONE OF THE CARRIERS IN THE PROPOSED ROUTE IS A WATER LINE.

The third subdivision of the appellants' brief, beginning at page 39, asserts that the order is void "because it results in short hauling the Rock Island and the Frisco contrary to the provisions of Paragraph Four of Section 15, of the Interstate Commerce Act." In other words, the fact that they could obtain a longer haul via all rail movement seemed to them to be the complete answer to the request of complainants for through routes via rail and water where to do so would involve a shorter haul over these two originating lines.

There might have been something in this contention prior to the Transportation Act of 1920. The Act as it formerly read provided that in establishing through routes, the Commission should not require a carrier without its consent to embrace substantially less than the entire length of its railroad unless to do so would make an unnaturally long route. But Congress in its wisdom saw fit to adopt a broader policy and to confer additional authority upon the Commission in the enactment of the Esch-Cummins Law in 1920, known as the Transportation Act, 1920. In that Act, Section 15, provided that the Commission should whenever deemed by it desirable in the public interest establish through routes and joint rates, and it specifically pro-

vided that this should be done also in the case where one of the carriers is a water line and that the maximum rates applicable thereon might be fixed by the Commission. Paragraph 4 of Section 15 was revised so as to specifically except prohibition against short-hauling a carrier in cases where one of the carriers is a water line. The provisions of the law as it now reads are as follows:

> "(4) In establishing any such through route the Commission shall not *(except as provided in section 3, and except where one of the carriers is a water line)*, require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established." (Italics ours.)

This legislation shows that Congress desired to encourage the use of and development of water lines. It recognized that in many cases the ports are natural gateways for the movement of traffic and that to handle traffic through such ports it will be necessary for lines to haul same less distance than where it moved entirely by rail to the same ultimate destination. This amendment was made to take care of just such a situation as that in this case. Here we have the State of Oklahoma situated just north of and only a short distance from the Gulf of Mexico, and the Gulf ports constitute natural gateways for traffic moving from Oklahoma points to Atlantic seaboard. Congress says that such a situation should be taken care of by appropriate amendment to the law, in order that the Interstate Commerce

Commission might establish such routes and bring about a free flow of commerce through the various reasonable and available channels. The law is clear. The purpose of the law is clear. The testimony in this case is undisputed that there is a public demand for these routes via Gulf. It is already employed on other lines of traffic and in past years it was also employed on Oklahoma cotton traffic.

Under these circumstances there is no doubt as to the intention of Congress that the Commission should preserve to the shippers routes through these water gateways.

It may be further stated that in the same Act Congress specifically declared that it was its policy to "permit, encourage and develop water transportation, service, facilities, in connection with the commerce of the United States and to foster and preserve in full vigor, both rail and water transportation." This is part of the law under which the foregoing powers are conferred upon the Commission (see Section 500 of the Transportation Act). It is not shown that to establish such routes will cripple rail carriers. Public interest is paramount and must be served first. The decision is in line with the declared policy of Congress.

VI

THE INTERSTATE COMMERCE COMMISSION HAD LEGAL AUTHORITY TO REQUIRE THE ESTABLISHMENT OF THE THROUGH ROUTES EVEN THOUGH THE PARTICIPATING CARRIERS WERE NOT UNDER A COMMON CONTROL.

The appellants make a contention that the provision of Section 15 and also the provisions of Section 6 of the Interstate Commerce Act are qualified by Section 1 in that the Commission is given no authority to require the establishment of through routes, unless all of the carriers parties to such through routes are under a common control. In the first place, the authority of the Commission given in Section 15 gives a very broad authority to require the establishment of joint through routes and joint rates. In the second place, Section 6 which was a part of the so-called Panama Act of August 24, 1912 (37 Stat. at L. 560) specifically gives to the Commission jurisdiction over rail and water transportation through the Panama Canal or otherwise by a common carrier or carriers on property transported from point to point in the United States and was clearly an addition to the then existing Interstate Commerce Act which referred to carriers under a common control, management or arrangement. Section 6, Paragraph 13 reads as follows:

> "When property may or is transported from point to point in the United States *by rail-and-water through the Panama Canal or otherwise*, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission *shall have jurisdiction* of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the fol-

lowing particulars, *in addition to the jurisdiction given by the Act to regulate commerce,* as amended June eighteenth, nineteen hundred and ten:

"(a) To establish physical connection between the lines of the rail carrier and the dock * * *

"(b) *To establish through routes and maximum joint rates between and over such rail and water lines,* and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced. (Italics ours.)

In its decision the Commission held that it so construed this to confer upon it the power to establish through routes and maximum joint rates whether the carriers were under a common control, management or arrangement or not.

However, it is our opinion that the defendant carriers come within the provisions of Section 1 which defines the application of the provisions of the Interstate Commerce Act. Section 1 provides that the provisions of the Act shall apply to common carriers engaged in the transportation of property partly by railroad and partly by water "when both are used under a common control, management, or arrangement for a continuous carriage or shipment." Such was the wording of the Interstate Commerce Act when the Panama Canal Act was enacted and the Panama Canal Act specifically provided that it conferred a jurisdiction in addition to any jurisdiction that might be given by the Interstate Commerce Act. However, the evidence in this case clearly shows that arrangements were existing for a continuous carriage or shipment of property via the defendant lines over the very routes that were sought to be established by complainants for the transportation of cotton. These routes were established and applied for the transportation of other commodities between points in Oklahoma and

points in the destination territory. Evidently no such arrangement was contemplated as would amount to a through joint rate or through route; otherwise, the provisions of section 15 would have been largely superfluous. Complainants' exhibit 8 shows through joint rates and through routes on other commodities moving between the same origin and destination territory which were substantially less than the combination of locals. Cotton was not one of these commodities but there was an arrangement between the carriers for the continuous transportation of property in interstate commerce over the route which the complainants sought to have applied to the transportation of cotton. Furthermore, it was shown in the record that through bills of lading were issued for the shipment of cotton from points in Oklahoma to points in New England based on the combination rates moving via the Texas ports and over the same routes of movement that are sought to be established as through joint routes.

The witness Schnitzer, a traffic official of the Chicago Rock Island & Pacific Railway Company, one of the appellants, testified that through bills of lading were issued from points on his line in Oklahoma via Galveston to points in the destination territory as was shown at page 205 of the transcript of testimony. It is undisputed therefore that through bills of lading were issued and that the defendants have through rates and joint routes on other commodities moving in both directions between origin and destination territory. It is furthermore undisputed that one of the water lines involved, the so-called MORGAN LINE is part of the Southern Pacific Railway system, which also participates in the movement of cotton from Oklahoma to the destination territory in question. The appellants claim that the Act of February 28, 1920, known as the TRANS-

PORTATION ACT of 1920 provided that the issuance of a through bill of lading should not constitute an arrangement for continuous carriage, but this provision was a part of the statute which dealt with the filing of tariffs embodying foreign or export commerce, as will be seen by reading Section 25, of the Interstate Commerce Act as amended in 1920. This particular Act did not undertake to prescribe a rule of evidence for determining what constituted a joint arrangement in interstate commerce.

On the other hand, the Supreme Court in the case of *Cincinnati N. O. & T. P. Ry. vs. Interstate Commerce Commission,* 162 U. S. 184, 192 (40 L. Ed. 935, 938,) held specifically that an arrangement of through bills of lading would constitute a common arrangement. This dealt with interstate commerce and would seem to govern the question here involved. We quote the following excerpt from the Court's decision:

> "But when the Georgia Railroad Company enters into the carriage of foreign freight, by agreeing to receive the goods by virtue of foreign through bills of lading, and to participate in through rates and charges, it thereby becomes part of a continuous line, not made by a consolidation with the foreign companies, but made by an arrangement for the continuous carriage or shipment from one state to another, and thus becomes amenable to the Federal Act, in respect to such interstate commerce."

In the case of *Louisville-Nashville Ry. Co. vs. Behlmer,* 175 U. S. 648, 44 L. Ed. 309, the court again held that although carriers might have a combination of locals for certain transportation, yet the fact that they did provide for the continuous shipment of traffic via the route in question brought them within the jurisdiction of the Interstate

Commerce Commission under the provisions of Section 1 above referred to. (See court's opinion, page 662.)

It does not seem to us that there can be any serious argument about the question in this case for the simple reason that the instrumentalities in question are in fact engaged in the transportation of interstate commerce of various commodities under joint through routes between the points of origin and the points of destination and also that they do provide for the continuous shipment of cotton over this line of movement even though they do not maintain through joint rates.

CONCLUSION

The brief of appellants assigns numerous errors, many of which are not discussed in the body of the brief, and on the other hand, the brief attempts to discuss matters that are not assigned as errors. We have not undertaken to go into detail as to these matters, but have contented ourselves with a general answer to the principal propositions set forth in appellants brief. We respectfully submit that the judgment of the lower court was made after due hearing and careful examination and that there is ample evidence and statutory authority to sustain the action of the Commission as was found in the judgment of the lower court.

Respectfully submitted,

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